



भारत का राजपत्र The Gazette of India

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

साप्ताहिक

WEEKLY

सं. 42]

नई दिल्ली, अक्टूबर 14—अक्टूबर 20, 2012, शनिवार/आश्विन 22—आश्विन 28, 1934

No. 42]

NEW DELHI, OCTOBER 14—OCTOBER 20, 2012, SATURDAY/ASVINA 22—ASVINA 28, 1934

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके।

Separate Paging is given to this Part in order that it may be filed as a separate compilation.

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES
AND PENSIONS

(कार्मिक और प्रशिक्षण विभाग)

(Department of Personnel and Training)

नई दिल्ली, 3 अक्टूबर, 2012

New Delhi, the 3rd October, 2012

का.आ. 3159.—केन्द्रीय सरकार एतद्वारा दण्ड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उप-धारा (2) सपठित जनरल क्लाजेज अधिनियम, 1897 (1897 का अधिनियम सं. 10) की धारा 16 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए दिनांक 20-6-2012 की विभागीय अधिसूचना सं. 202/5/2011-एवीडी-II द्वारा जारी श्री शिव चरन लाल शर्मा, वकील की अनुबंध आधार पर केन्द्रीय अन्वेषण ब्यूरो में लोक अभियोजक के रूप में नियुक्ति को रद्द करती है।

S.O. 3159.— In exercise of the powers conferred by sub-section (2) of Section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby cancel the appointment of Shri Shiv Charan Lal Sharma, Advocate as Public Prosecutor on contract basis in the Central Bureau of Investigation issued by this Department Notification No. 202/5/2011-AVD-II dated 20-6-2012.

[सं. 202/5/2011-एवीडी-II]

[No. 202/5/2011-AVD-II]

राजीव जैन, अवर सचिव

RAJIV JAIN, Under Secy.

नई दिल्ली, 3 अक्टूबर, 2012

का.आ. 3160.—केन्द्रीय सरकार एतद्द्वारा दण्ड प्रक्रिया संहिता 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उप-धारा (2) सपठित जनरल क्लाजेज अधिनियम, 1897 (1897 का अधिनियम सं. 10) की धारा 16 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए दिनांक 24-10-2011 की विभागीय अधिसूचना सं. 202/5/2011-एवीडी-II द्वारा जारी श्री एल.एम.एस. बिष्ट, वकील की अनुबंध आधार पर केन्द्रीय अन्वेषण ब्यूरो में लोक अभियोजक के रूप में नियुक्ति को रद्द करती है।

[सं. 202/5/2011-एवीडी-II]

राजीव जैन, अवर सचिव

New Delhi, the 3rd October, 2012

S.O. 3160.—In exercise of the powers conferred by sub-section (2) of Section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby cancel the appointment of Shri L.M.S. Bist, Advocate as Public Prosecutor on contract basis in the Central Bureau of Investigation issued by this Department Notification No. 202/5/2011-AVD-II dated 24-10-2011.

[No. 202/5/2011-AVD-II]

RAJIV JAIN, Under Secy.

नई दिल्ली, 3 अक्टूबर, 2012

का.आ. 3161.—केन्द्रीय सरकार एतद्द्वारा दण्ड प्रक्रिया संहिता 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उप-धारा (2) सपठित जनरल क्लाजेज अधिनियम, 1897 (1897 का अधिनियम सं. 10) की धारा 16 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए दिनांक 20-6-2012 की विभागीय अधिसूचना सं. 202/5/2011-एवीडी-II द्वारा जारी श्री मानस कुमार मण्डल, वकील की अनुबंध आधार पर केन्द्रीय अन्वेषण ब्यूरो में लोक अभियोजक के रूप में नियुक्ति को रद्द करती है।

[सं. 202/5/2011-एवीडी-II]

राजीव जैन, अवर सचिव

New Delhi, the 3rd October, 2012

S.O. 3161.—In exercise of the powers conferred by sub-section (2) of Section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby cancel the appointment of Shri Manas Kumar Mandal, Advocate as Public Prosecutor on contract basis in the Central Bureau of Investigation issued by this Department Notification No. 202/5/2011-AVD-II dated 20-06-2012.

[No. 202/5/2011-AVD-II]

RAJIV JAIN, Under Secy.

सीमा-शुल्क के मुख्य आयुक्त, गुजरात क्षेत्र का कार्यालय

अहमदाबाद, 26 सितम्बर, 2012

सं. 3/2012—13 सीमा शुल्क, गुजरात

का.आ. 3162.—भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, नई दिल्ली, द्वारा जारी अधिसूचना सं. 33/94-सीमा-शुल्क (एन.टी.) दिनांक 01 जुलाई, 1994 (यथा संशोधित) और अधिसूचना संख्या 14/2002-सीमा-शुल्क (एन.टी.) दिनांक 7 मार्च, 2002 (यथा संशोधित) द्वारा, सीमा-शुल्क अधिनियम, 1962 की धारा 152 खंड (a) और सीमा-शुल्क अधिनियम, 1962 की धारा 4 की उप-धारा (1) के अंतर्गत प्रदत्त शक्तियों का प्रयोग करते हुए, मैं, हंस कुमार जैन, मुख्य आयुक्त, सीमा-शुल्क, गुजरात क्षेत्र, अहमदाबाद, गुजरात राज्य के अंतर्गत अमरेली जिले के राजुला तालुका में स्थित गांव “रामपरा”, को, सीमा-शुल्क अधिनियम, 1962 की धारा 9 के तहत “वेअरहाउसिंग स्टेशन” घोषित करता हूं।

[फा. सं. VIII/48-179/टी/सीसीओ/2010]

हंस कुमार जैन, मुख्य आयुक्त सीमा-शुल्क

OFFICE OF THE CHIEF COMMISSIONER OF CUSTOMS, GUJARAT ZONE

Ahmedabad, the 26th September, 2012

No. 3/2012-13-Customs, Gujarat

S.O. 3162.—In exercise of powers conferred vide Notification No. 33/94-Cus. (N.T.) dated 1-7-1994 (as amended) and Notification No. 14/2002-Cus. (N.T.) dated 07-03-2002 (as amended) issued by Government of India, Ministry of Finance, Department of Revenue, New Delhi, under clause (a) of Section 152 of the Customs Act, 1962 and sub-section (1) of Section 4 of the Customs Act, 1962 respectively, I, Hans Kumar Jain, Chief Commissioner of Customs, Gujarat Zone, Ahmedabad, hereby declare village “Rampara” falling under Rajula Taluka of Amreli District, in the State of Gujarat, as ‘Warehousing Station’ under Section 9 of the Customs Act, 1962.

[F. No. VIII/48-179/T/CCO/2010]

HANS KUMAR JAIN, Chief Commissioner of Customs

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 9 अक्टूबर, 2012

का.आ.3163.—भारतीय स्टेट बैंक अधिनियम, 1955 (1955 का 23) की धारा 19 के खण्ड (क) और धारा 20 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श के पश्चात्, एतद्वारा, भारतीय स्टेट बैंक के मौजूदा उप प्रबंध निदेशक, श्री एस. विश्वनाथन (जन्म तिथि 30-4-1954) को उनके द्वारा पदभार ग्रहण करने की तारीख से 30 अप्रैल, 2014 तक अर्थात् उनके अधिवर्षिता की आयु प्राप्त करने की तारीख तक अथवा अगले आदेशों तक, जो भी पहले हो, 75,500-80,000 रुपये के वेतनमान में भारतीय स्टेट बैंक के प्रबंध निदेशक के तौर पर नियुक्त करती है।

[फा. सं. 2/1/2011-बीओ-I]

विजय मल्होत्रा, अवर सचिव

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 9th October, 2012

S.O. 3163.—In exercise of the powers conferred by clause (b) of Section 19 and sub-section (1) of Section 20 of the State Bank of India Act, 1955 (23 of 1955), the Central Government, after consultation with Reserve Bank of India, hereby appoints Shri S. Visvanathan (DoB : 30-04-1954) presently Deputy Managing Director, State Bank of India as Managing Director, State Bank of India in the pay scale of ₹ 75,500-80,000, with effect from the date of taking over charge of the post till 30th April, 2014 i.e. the date of his attaining the age of superannuation or until further orders, whichever is earlier.

[F. No. 2/1/2011-BO- I]

VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 10 अक्टूबर, 2012

का.आ. 3164.—भारतीय निर्यात-आयात बैंक अधिनियम, 1981 (1981 का 28) की धारा 6 की उप-धारा (1) के खंड (ड) के उप-खंड (i) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, वित्त मंत्रालय, नई दिल्ली के मुख्य आर्थिक सलाहकार डॉ. रघुराम जी. राजन को डॉ. कौशिक बसु के स्थान पर भारतीय निर्यात-आयात बैंक के निदेशक मण्डल में निदेशक के रूप में नामित करती है।

[फा. सं. 9/16/2012-आईएफ-I]

एस. गोपाल कृष्ण, अवर सचिव

New Delhi, the 10th October, 2012

S.O. 3164.—In pursuance of sub-clause (i) of clause (e) of sub-section (1) of Section 6 of the Export Import Bank of India Act, 1981 (28 of 1981), Central Government hereby nominates Dr. Raghuram G. Rajan, Chief Economic Advisor, Ministry of Finance, New Delhi as director on the Board of Directors of Export Import Bank of India vice Dr. Kaushik Basu.

[F. No. 9/16/2012-IF-I]

S. GOPAL KRISHNA, Under Secy.

विदेश मंत्रालय

(सीपीवी प्रभाग)

नई दिल्ली, 9 अक्टूबर, 2012

का.आ. 3165.—राजनयिक और कौंसलीय ऑफिसर (शपथ और फीस) के अधिनियम, 1948 (1948 का 41) की धारा 2 के खंड (क) के अनुसरण में केन्द्र सरकार एतद्वारा श्री विनय शर्मा, सहायक को 9 अक्टूबर, 2012 से भारत के कौंसलावास में सहायक कौंसुलर अधिकारी के कर्तव्यों का पालन करने के लिए प्राधिकृत करती है।

[सं. टी. 4330/01/2006]

आर. के. पेरिन्डिया, अवर सचिव (कौंसुलर)

MINISTRY OF EXTERNAL AFFAIRS

(CPV DIVISION)

New Delhi, the 9th October, 2012

S.O. 3165.—In pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (41 of 1948), the Central Government hereby authorize Shri Vinay Sharma, Assistant Consulate General of India, Shanghai to perform the duties of Assistant Consular Officer with effect from 9th October, 2012.

[No. T. 4330/01/2006]

R.K. PERINDIA, Under Secy. (Consular)

मानव संसाधन विकास मंत्रालय

(उच्चतर शिक्षा विभाग)

(राजभाषा यूनिट)

नई दिल्ली, 4 अक्टूबर, 2012

का.आ. 3166.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में, मानव संसाधन विकास मंत्रालय (उच्चतर शिक्षा विभाग)

के अंतर्गत, प. द्वारका प्रसाद मिश्र, भारतीय सूचना प्रौद्योगिकी, अभिकल्पन एवं विनिर्माण संस्थान, जबलपुर को ऐसे कार्यालय के रूप में, जिसके 80 प्रतिशत से अधिक कर्मचारीवृन्द ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है।

[सं. 11011-1/2011-रा.भा.ए.]

अनन्त कुमार सिंह, संयुक्त सचिव

**MINISTRY OF HUMAN RESOURCE
DEVELOPMENT**

(Department of Higher Education)

(O.L. UNIT)

New Delhi, the 4th October, 2012

S.O. 3166.—In pursuance of sub rule (4) of Rule 10 of the Official Languages (Use for Official Purposes of the Union) Rules, 1976, the Central Government hereby notifies the Pt. Dwarka Prasad Mishra, Indian Institute of Information Technology, Design & Manufacturing Jabalpur under the Ministry of Human Resource Development, (Deptt. of Higher Education) as office, whose more than 80% members of the staff have acquired working knowledge of Hindi.

[No. 11011-1/2011-O.L.U.]

ANANT KUMAR SINGH, Jt. Secy.

संचार और सूचना प्रौद्योगिकी मंत्रालय

(दूरसंचार विभाग)

(राजभाषा प्रभाग)

नई दिल्ली, 5 अक्टूबर, 2012

का.आ. 3167.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम 1976 (यथा संशोधित 1987) के नियम 10(4) के अनुसरण में संचार और सूचना प्रौद्योगिकी मंत्रालय, दूरसंचार विभाग के प्रशासनिक नियंत्रणाधीन निम्नलिखित कार्यालयों जिसमें 80 प्रतिशत से अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को एतद्वारा अधिसूचित किया जाता है :

1. मुख्य महाप्रबंधक, राष्ट्रीय इलेक्ट्रॉनिक स्विचन केन्द्र, झंडेवालान, नई दिल्ली;
2. मुख्य महाप्रबंधक, अंडमान एवं निकोबार दूरसंचार परिमंडल, टेलीफोन भवन, पोर्ट ब्लेयर-744101;

3. मुख्य महाप्रबंधक, दूरसंचार गुणवत्ता आश्वासन परिमंडल, बेंगलूरु-41 .

[सं. ई. 11016/1/2009-रा.भा.]

भारत भूषण कौरा, संयुक्त सचिव

**MINISTRY OF COMMUNICATIONS AND
INFORMATION TECHNOLOGY**

(Department of Telecommunications)

(OFFICIAL LANGUAGE DIVISION)

New Delhi, the 5th October, 2012

S.O. 3167.—In pursuance of Rule 10(4) of the Official Language (use for official purposes of the Union), rules, 1976 the Central Government hereby notifies following offices under the administrative control of Ministry of Communications and I.T., Department of Telecommunications where of more than 80% staff have acquired working knowledge of Hindi :

1. Chief General Manager, National Electronic Swichan Centre, Jhandewalan, New Delhi;
2. Chief General Manager, Andaman & Nicobar Telecom Circle, Port Blair-744101;
3. Chief General Manager, Telecom Quality Assurance Circle, Bangalore-41.

[No.E. 11016/1/2009(O.L.)]

BHARAT BHUSHAN KAURA, Jt. Secy.

युवा कार्यक्रम एवं खेल मंत्रालय

नई दिल्ली, 8 अक्टूबर, 2012

का.आ. 3168.—केन्द्रीय सरकार एतद्वारा राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम 1976 के नियम 10 के उप-नियम (4) के अनुसरण में युवा कार्यक्रम और खेल मंत्रालय के स्वायत्तशासी कार्यालय, भारतीय खेल प्राधिकरण-उप केन्द्र, गुवाहाटी, असम, जिसके 80 प्रतिशत से अधिक कर्मचारीवृन्द ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है।

[फा. सं. ई.-11011/2/2008-हि.ए.]

थंगलेमलियन, उप सचिव

MINISTRY OF YOUTH AFFAIRS AND SPORTS

New Delhi, the 8th October, 2012

S.O. 3168.—In pursuance of sub-rule (4) of Rule 10 of the Official Language (Use for Official Purposes of the Union) Rule 1976, the Central Government hereby notifies Sports Authority of India-Sub Centre, Guwahati, Assam an autonomous office of Ministry of Youth Affairs & Sports, whereof more than 80% staff have acquired working knowledge of Hindi.

[F.No. E-11011/2/2008-H.U.]

THANGLEMLIAN, Dy. Secy.

संस्कृति मंत्रालय

नई दिल्ली, 3 सितम्बर, 2012

का.आ. 3169.—केंद्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में संस्कृति मंत्रालय के संबद्ध कार्यालय भारतीय पुरातत्व सर्वेक्षण के अंतर्गत आने वाले निम्नलिखित कार्यालयों जिनके 80 प्रतिशत से अधिक कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है को अधिसूचित करती है:-

1. बागवानी प्रभाग सं० 1, भारतीय पुरातत्व सर्वेक्षण, आगरा।
2. उप-मंडल द्वारका, भारतीय पुरातत्व सर्वेक्षण।
3. क्षेत्रीय निदेशक का कार्यालय (मध्य क्षेत्र), भारतीय पुरातत्व सर्वेक्षण, भोपाल (मध्य प्रदेश)।
4. श्रीनगर मंडल, भारतीय पुरातत्व सर्वेक्षण, जम्मू।
5. देहरादून मंडल, भारतीय पुरातत्व सर्वेक्षण, देहरादून मंडल, देहरादून (उत्तराखंड)।
6. उप मंडल देहरादून कलिंगा, भारतीय पुरातत्व सर्वेक्षण, देहरादून (उत्तराखंड)।
7. उप मंडल अल्मोड़ा, भारतीय पुरातत्व सर्वेक्षण, अल्मोड़ा, (उत्तराखंड)।
8. उप मंडल काशीपुर, भारतीय पुरातत्व सर्वेक्षण, द्रोण सागर, काशीपुर।
9. उप मंडल, गोपेश्वर, भारतीय पुरातत्व सर्वेक्षण, गोपीनाथ परिसर, गोपेश्वर।

10. चण्डीगढ़ मंडल, भारतीय पुरातत्व सर्वेक्षण, चण्डीगढ़।

[फा. सं. 13016/1/2011-हिंदी]

अरविंद मंजीत सिंह, संयुक्त सचिव

MINISTRY OF CULTURE

New Delhi, the 3rd September, 2012

S.O. 3169.—In pursuance of sub-rules (4) of Rule 10 of the Official Language (Use for Official Purposes of the Union) Rules, 1976 the Central Government hereby notifies the following offices of Archaeological Survey of India, Janpath, New Delhi-110001 under the administrative control of the Ministry of Culture, whereof more than 80% of staff have acquired the working knowledge of Hindi:—

1. Horticulture Division No. 1, Archaeological Survey of India, Agra.
2. Sub-Circle Dwarka, Archaeological Survey of India.
3. Office of the Regional Director (Central Region), Archaeological Survey of India, Bhopal (Madhya Pradesh).
4. Sri Nagar Circle, Archaeological Survey of India, Jammu.
5. Dehradun Circle, Archaeological Survey of India, Dehradun, Uttarakhand.
6. Sub-Circle, Dehradun, Archaeological Survey of India, Uttarakhand, Kalinga Monument, Dehradun.
7. Sub-Circle, Almora, Archaeological Survey of India Almora, Uttarakhand.
8. Sub-Circle, Kashipur, Archaeological Survey of India, Dronasagar, Kashipur.
9. Sub-Circle, Gopeshwar, Archaeological Survey of India, Gopinath Temple Complex, Gopeshwar.
10. Chandigarh Circle, Archaeological Survey of India, Chandigarh.

[F.No. 13016/1/2011-Hindi]

ARVIND MANJIT SINGH, Jt. Secy.

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

नई दिल्ली, 12 अक्टूबर, 2010

का.आ. 3170.—केन्द्रीय सरकार का, विहित प्राधिकारी द्वारा जारी मॉडल अनुमोदन प्रमाण-पत्र के साथ उसे प्रस्तुत रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित मॉडल (नीचे दी गई आकृति देखें) बाट और माप मानक अधिनियम, 1976 (1976 का 60) तथा बाट और माप मानक (मॉडलों का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप है और इस बात की संभावना है कि लगातार प्रयोग की अवधि में भी उक्त मॉडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा प्रदान करता रहेगा;

अतः अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उप-धारा (7) और उप-धारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मैसर्स वामन इंस्ट्रूमेंट्स कंपनी, 4090, चौथा तल, भंडुप इंस्ट्रियल एस्टेट, पन्नालाल कंपाउंड, एल बी एस मार्ग, भंडूप, मुंबई-400078 द्वारा विनिर्मित विशेष यथार्थता (यथार्थता वर्ग I) वाले “वीए-4” शृंखला के अंकक सूचन सहित अस्वचालित तोलन उपकरण (टेबलटॉप प्रकार) के मॉडल का, जिसके ब्रांड का नाम “वामन” है (जिसे इसमें इसके पश्चात् उक्त मॉडल कहा गया है) और जिसे अनुमोदन चिह्न आई एन डी/09/10/132 समनुदेशित किया गया है, अनुमोदन प्रमाण-पत्र जारी करती है।

उक्त मॉडल एक इलैक्ट्रोमैग्नेटिक फोर्स कम्पेनसेशन प्रिंसीपल पर आधारित अस्वचालित तोलन उपकरण है। इसकी अधिकतम क्षमता 220 ग्रा है और न्यूनतम क्षमता 100 मि.ग्रा. है। सत्यापन मापमान अंतराल (ई) 1 मि.ग्रा. है। इसमें एक आधेयतुलन युक्ति है जिसका शत-प्रतिशत व्यवकलनात्मक धारित अधियतुलन प्रभाव है। प्रकाश उत्सर्जक डायोड (ए ई डी) प्रदर्श तोलन परिणाम उपदर्शित करता है। उपकरण 230 वोल्ट और 50 हर्ट्ज प्रत्यावर्ती धारा विद्युत प्रदाय पर कार्य करता है।



आकृति-2 : मॉडल को सीलिंग करने का योजनाबद्ध डायग्राम ।

स्केल की बाडी में दिए गए होल्ज में से सीलिंग वायर निकाल कर सीलिंग की गई है। मॉडल को सीलबंद करने के उपबंध का एक प्ररूपी योजनाबद्ध डायग्राम ऊपर दिया गया है।

उपकरण में बाहरी कलिब्रेशन तक पहुंच की सुविधा है। बाहरी कलिब्रेशन तक पहुंच को रोकने के लिए ए/डी कार्ड/मदर बोर्ड में डिप स्विच भी दिया गया है।

और केन्द्रीय सरकार उक्त अधिनियम की धारा 36 की उप-धारा (12) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि उक्त मॉडल के अनुमोदन के इस प्रमाण-पत्र के अंतर्गत उसी विनिर्माता द्वारा उसी सिद्धांत, डिजाइन के अनुसार और उसी सामग्री से जिससे उक्त अनुमोदित मॉडल विनिर्माण किया गया है, विनिर्मित उसी शृंखला के वैसे ही मेक, यथार्थता और कार्यपालन के तोलन उपकरण भी होंगे जो 1 मि.ग्रा. या इससे अधिक के “ई” मान के लिए 50,000 या अधिक के रेंज में सत्यापन मापमान अंतराल (एन) सहित 50 कि.ग्रा. तक की अधिकतम क्षमता वाले हैं और “ई” मान के 1×10^6 या 2×10^6 या 5×10^6 , के हैं, जो धनात्मक या ऋणात्मक पूर्णांक या शून्य के समतुल्य हैं।

[फा. सं. डब्ल्यू एम-21(105)/2010]

बी. एन. दीक्षित, निदेशक, विधिक माप विज्ञान

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

New Delhi, the 12th October, 2010

S.O. 3170.—Whereas the Central Government, after considering the report submitted to it by prescribed authority, is satisfied that the Model described in the said report (see the figure given below) is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said Model is likely to maintain its accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by sub-section (7) and (8) of Section 36 of the said Act, the Central Government hereby approves and issues the certificate of approval of the Model of non-automatic weighing instrument (Table top type) with digital indication of special accuracy (Accuracy class-I) of series "VA-4" and with brand name "VAMAN" (hereinafter referred to as the said Model), manufactured by M/s. Vaman Instruments Company, 4090, 4th Floor, Bhandup Industrial Estate, Pannalal Compound, L.B.S. Marg, Bhandup, Mumbai- 400078 and which is assigned the approval mark IND/0910/132;

The said Model is an electro magnetic force compensation principle non-automatic weighing instrument with a maximum capacity of 220g. and minimum capacity of 100mg. The verification scale interval(e) is 1mg. It has a tare device with a 100 per cent subtractive retained tare effect. The LED display indicates the weighing result. The instrument operates on 230V, 50Hz alternative current power supply.



Figure-1 Model



Figure-2 Sealing Diagram

Sealing is done by passing the sealing wire from the body of the scale through holes in the top cover and bottom. A typical schematic diagram of sealing provision of the model is given above.

The instrument has external control to calibration. A dip switch has been provided in A/D card/mother board to disable access to external calibration.

Further, in exercise of the power conferred by sub-section (12) of Section 36 of the said Act, the Central Government hereby declares that this certificate of approval of the said model shall also cover the weighing instruments of similar make, accuracy and performance of same series with maximum capacity up to 50 kg. with verification scale interval(n) in the range of 50,000 or above for 'e' value of 1mg. or more and with 'e' value of 1×10^k , 2×10^k or 5×10^k , where k is a positive or negative whole number or equal to zero manufactured by the same manufacturer in accordance with the same principle, design and materials with which, the said approved model has been manufactured.

[F. No. WM-21(105)/2010]

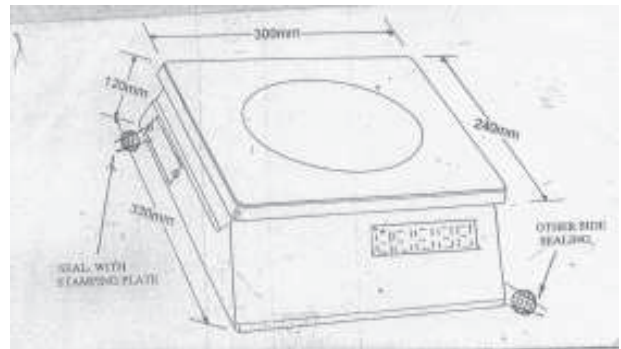
B.N. DIXIT, Director of Legal Metrology

नई दिल्ली, 12 अक्टूबर, 2010

का.आ. 3171.—केन्द्रीय सरकार का, विहित प्राधिकारी द्वारा जारी मॉडल अनुमोदन प्रमाण-पत्र के साथ उसे प्रस्तुत रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित मॉडल (नीचे दी गई आकृति देखें) बाट और माप मानक अधिनियम, 1976 (1976 का 60) तथा बाट और माप मानक (मॉडलों का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप है और इस बात की संभावना है कि लगातार प्रयोग की अवधि में भी उक्त मॉडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा प्रदान करता रहेगा;

अतः अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उप-धारा (7) और उप-धारा (8) द्वारा शक्तियों का प्रयोग करते हुए मैसर्स वामन इंस्ट्रूमेंट्स कंपनी, 4090, चौथा तल, भंडुप इंडस्ट्रियल एस्टेट, पन्नालाल कंपाउंड, एल बी एस मार्ग, भंडूप, मुंबई-400078 द्वारा विनिर्मित विशेष यथार्थता (यथार्थता वर्ग II) वाले “वी बी” श्रृंखला के अंकक सूचन सहित अस्वचालित तोलन उपकरण (टेबल टॉप प्रकार) के मॉडल का, जिसके ब्रांड का नाम “वामन” है (जिसे इसमें इसके पश्चात् उक्त मॉडल कहा गया है) और जिसे अनुमोदन चिह्न आई एन डी/09/10/133 समनुदेशित किया गया है, अनुमोदन-प्रमाण पत्र जारी करती है।

उक्त मॉडल एक विकृत गेज प्रकार का भार सेल आधारित अस्वचालित तोलन उपकरण (टेबल टॉप प्रकार) है। इसकी अधिकतम क्षमता 20 कि.ग्रा. और न्यूनतम क्षमता 50 ग्रा. है। सत्यापन मापमान अंतराल (ई) 1 ग्रा. है। इसमें एक आधेयतुलन युक्ति है जिसका शत प्रतिशत व्यकलनात्मक धारित आधेयतुलन प्रभाव है। प्रकाश उत्सर्जक डायोड (एल ई डी) प्रदर्श तोलन परिणाम उपदर्शित करता है। उपकरण 230 वोल्ट और 50 हर्ट्ज प्रत्यावर्ती धारा विद्युत प्रदाय पर कार्य करता है।



आकृति-2 : मॉडल को सीलिंग करने का योजनाबद्ध डायग्राम।

स्केल की बाडी में दिए गए होल्ज में से सीलिंग वायर निकाल कर सीलिंग की गई है। मॉडल को सीलबंद करने के उपबंध का एक प्ररूपी योजनाबद्ध डायग्राम ऊपर दिया गया है।

उपकरण में बाहरी केलिब्रेशन तक पहुंच की सुविधा है। बाहरी केलिब्रेशन तक पहुंच को रोकने के लिए ए/डी कार्ड/मदर बोर्ड में डिप स्विच भी दिया गया है।

और केन्द्रीय सरकार उक्त अधिनियम की धारा 36 की उप-धारा (12) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि उक्त मॉडल के अनुमोदन के इस प्रमाणपत्र के अंतर्गत उसी विनिर्माता द्वारा उसी सिद्धांत, डिजाइन के अनुसार और उसी सामग्री से जिससे उक्त अनुमोदित माडल विनिर्माण किया गया है, विनिर्मित उसी श्रृंखला के वैसे ही मेक, यथार्थता और कार्यपालन के तोलन उपकरण भी होंगे जो 1 मि.ग्रा. से 50 मि.ग्रा. तक के “ई” मान के लिए 100 से 50,000 तक की रेंज में सत्यापन मापमान अंतराल (एन) और 100 मि. ग्रा. या उससे अधिक के “ई” मान के लिए 5000 से 50,000 तक की रेंज में सत्यापन अंतराल (एन) सहित 50 कि.ग्रा. तक की अधिकतम क्षमता वाले हैं और “ई” मान के $1 \times 10^{\circ}$, $2 \times 10^{\circ}$, $5 \times 10^{\circ}$, के हैं, जो धनात्मक या ऋणात्मक पूर्णांक या शून्य के समतुल्य हैं।

[फा. सं. डब्ल्यू. एम.-21(105)/2010]

बी. एन. दीक्षित, निदेशक, विधिक माप विज्ञान

New Delhi, the 12th October, 2010

S.O. 3171.—Whereas the Central Government, after considering the report submitted to it by prescribed authority, is satisfied that the model described in the said report (see the figure given below) is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said model is likely to maintain its accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by sub-sections (7) and (8) of Section 36 of the said Act, the Central Government hereby issues and publishes the certificate of approval of the model of non-automatic weighing instrument (Table top type) with digital indication of High Accuracy (Accuracy class-II) of series “VB” and with brand name “VAMAN” (hereinafter referred to as the said model), manufactured by M/s Vaman Instruments Company, 4090, 4th Floor, Bhandup Industrial Estate, Pannalal Compound, L.B.S. Marg, Bhandup, Mumbai-400078 which is assigned the approval mark IND/09/10/133.

The said model is a strain gauge type load cell based non-automatic weighing instrument (Tabletop type) with a maximum capacity of 20 kg. and minimum capacity of 50g. The verification scale interval (e) is 1g. It has a tare device with a 100 per cent subtractive retained tare effect. The light emitting diode (LED) display indicates the weighing result. The instrument operates on 230Volts, 50 Hertz alternative current power supply.

Figure-1 Mode I

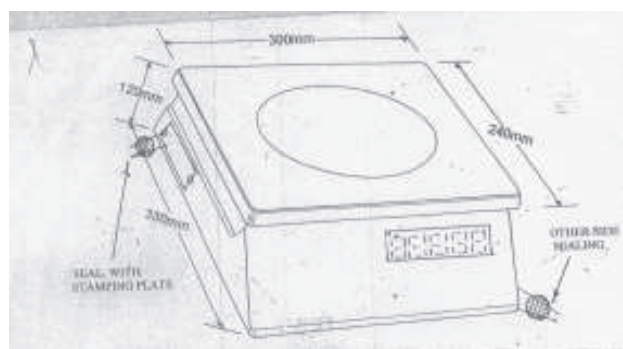


Figure-2 : Schematic diagram of sealing provision of the model.

Sealing is done by passing the sealing wire from the body of the scale through holes. A typical schematic diagram of sealing provision of the model is given above.

The instrument has external control to calibration. A dip switch has also been provided in A/D card/mother board to disable access to external calibration.

Further, in exercise of the powers conferred by sub-section (12) of Section 36 of the said Act, the Central Government hereby declares that this certificate of approval of the said Model shall also cover the weighing instrument of similar make and performance of same series with maximum capacity up to 50 kg. and with number of verification scale interval (n) in the range of 100 to 50,000 for 'e' value of 1 mg. to 50 mg. and with number of verification scale interval (n) in the range of 5000 to 50,000 for 'e' value of 100mg or more and with 'e' value 1×10^k , 2×10^k or 5×10^k , k being the positive or negative whole number or equal to zero, manufactured by the same manufacturer in accordance with the same principle, design and with the same materials with which, the approved Model has been manufactured.

[F.No. WM-21(105)/2010]

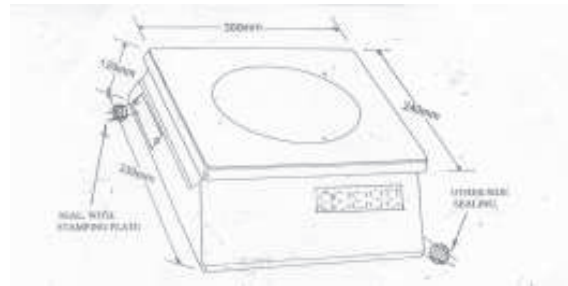
B.N. DIXIT, Director of Legal Metrology

नई दिल्ली, 12 अक्टूबर, 2010

का.आ. 3172.—केन्द्रीय सरकार का, विहित प्राधिकारी द्वारा जारी मॉडल अनुमोदन प्रमाण-पत्र के साथ उसे प्रस्तुत रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित मॉडल (नीचे दी गई आकृति देखें) बाट और माप मानक अधिनियम, 1976 (1976 का 60) तथा बाट और माप मानक (मॉडलों का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप है और इस बात की संभावना है कि लगातार प्रयोग की अवधि में भी उक्त मॉडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा प्रदान करता रहेगा;

अतः अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उप-धारा (7) और उप-धारा (8) द्वारा प्रदत्त शक्तियों को प्रयोग करते हुए मैसर्स वामन इंस्ट्रूमेंट्स कंपनी, 4090, चौथा तल, भंडुप इंडस्ट्रियल एस्टेट, पन्नालाल कंपाउंड, एल बी एस मार्ग, भंडूप, मुंबई-400078 द्वारा विनिर्मित मध्यम यथार्थता (यथार्थता वर्ग III) वाले “वी टी” शृंखला के अंकक सूचन सहित अस्वचालित तोलन उपकरण (टेबलटॉप प्रकार) के मॉडल का, जिसके ब्रांड का नाम “वामन” है (जिसे इसमें इसके पश्चात् उक्त मॉडल कहा गया है) और जिसे अनुमोदन चिह्न आई एन डी/09/10/134 समनुदेशित किया गया है, अनुमोदन प्रमाण-पत्र जारी करती है।

उक्त मॉडल एक विकृत गेज प्रकार का भार सेल आधारित अस्वचालित तोलन उपकरण (टेबलटॉप प्रकार) है। इसकी अधिकतम क्षमता 30 कि.ग्रा. और न्यूनतम क्षमता 100 ग्रा. है। सत्यापन मापमान अंतराल (ई) 5 ग्रा. है। इसमें एक आधेयतुलन युक्ति है जिसका शत-प्रतिशत व्यवकलनात्मक धारित आधेयतुलन प्रभाव है। प्रकाश उत्सर्जक डायोड (एल ई डी) प्रदर्श तोलन परिणाम उपदर्शित करता है। उपकरण 230 वोल्ट और 50 हर्ट्ज प्रत्यावर्ती धारा विद्युत प्रदाय पर कार्य करता है।



आकृति-2 : मॉडल को सीलिंग करने का योजनाबद्ध डायग्राम ।

स्केल की बाड़ी में दिए गए होल्ज में से सीलिंग वायर निकालकर सीलिंग की गई है। मॉडल को सीलबंद करने के उपबंध का एक प्ररूपी योजनाबद्ध डायग्राम ऊपर दिया गया है।

उपकरण में बाहरी कैलिब्रेशन तक पहुंच की सुविधा है। बाहरी कैलिब्रेशन तक पहुंच को रोकने के लिए ए/डी कार्ड/मदर बोर्ड में डिप स्विच भी दिया गया है।

और केन्द्रीय सरकार उक्त अधिनियम की धारा 36 की उप-धारा (12) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि उक्त मॉडल के अनुमोदन के इस प्रमाणपत्र के अंतर्गत उसी विनिर्माता द्वारा उसी सिद्धांत, डिजाइन के अनुसार और उसी सामग्री से जिससे उक्त अनुमोदित मॉडल विनिर्माण किया गया है, विनिर्मित उसी शृंखला के वैसे ही मेक, यथार्थता और कार्यपालन के तोलन उपकरण भी होंगे जो 100 मि.ग्रा. से 2 ग्रा. तक के “ई” मान के लिए 100 से 10,000 तक के रेंज में सत्यापन मापमान अंतराल (एन) और 5 ग्रा. या उससे अधिक के “ई” मान के लिए 500 से 10,000 तक की रेंज में सत्यापन मापमान अंतराल (एन) सहित 50 कि.ग्रा. तक की अधिकतम क्षमता वाले हैं और “ई” मान 1×10^3 , 2×10^3 , 5×10^3 के हैं, जो धनात्मक या ऋणात्मक पूर्णांक या शून्य के समतुल्य हैं।

[फा.सं. डब्ल्यू एम-21(105)/2010]

बी.एन. दीक्षित, निदेशक, विधिक माप विज्ञान

New Delhi, the 12th October, 2010.

S.O. 3172.—Whereas the Central Government, after considering the report submitted to it by prescribed authority, is satisfied that the model described in the said report (see the figure given below) is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said model is likely to maintain its accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by sub-sections (7) and (8) of section 36 of the said Act, the Central Government hereby approves and issues the certificate of approval of the model of non-automatic weighing instrument (Tabletop type) with digital indication, belonging to Medium Accuracy (Accuracy class-III) of series "VT" and with brand name "VAMAN" (hereinafter referred to as the said model), manufactured by M/s Vaman Instruments Company, 4090, 4th Floor, Bhandup Industrial Estate, Pannalal Compound, L.B.S. Marg, Bhandup, Mumbai-400078 which is assigned the approval mark IND/09/10/134.

The said model is a strain gauge type load cell based non-automatic weighing instrument (Tabletop type) with a maximum capacity of 30kg. and minimum capacity of 100g. The verification scale interval (e) is 5g. It has a tare device with a 100 percent subtractive retained tare effect. The light emitting diode (LED) display indicates the weighing result. The instrument operates on 230Volts, 50Hertz alternative current power supply.

Figure-1 Model

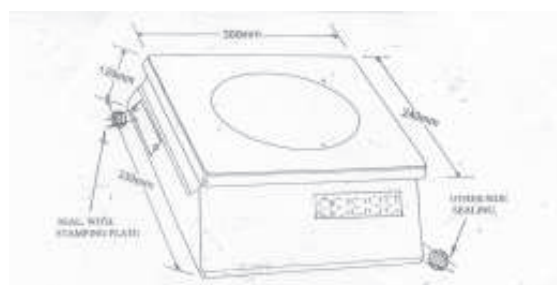


Figure-2 : Schematic diagram of sealing provision of the model.

Sealing is done by passing the sealing wire from the body of the scale through holes. A typical schematic diagram of sealing provision of the model is given above.

The instrument has external control to calibration. A dip switch has been provided in A/D card/mother board to disable access to external calibration.

Further, in exercise of the powers conferred by sub-section (12) of section 36 of the said Act, the Central Government hereby declares that this certificate of approval of the said Model shall also cover the weighing instrument of similar make, accuracy, performance and of the same series with maximum capacity up to 50kg and with number of verification scale interval (n) in the range of 100 to 10000 for 'e' value of 100mg to 2g and with number of verification scale interval (n) in the range of 500 to 10,000 for 'e' value of 5g or more and with 'e' value 1×10^k , 2×10^k or 5×10^k , k being the positive or negative whole number or equal to zero, manufactured by the said manufacturer in accordance with the same principle, design and materials with which, the approved Model has been manufactured.

[F.No. WM-21(105)/2010]

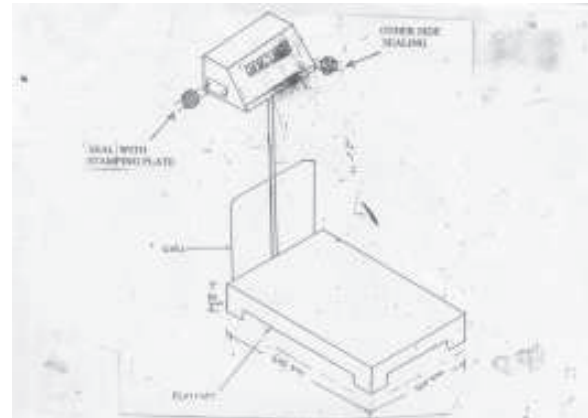
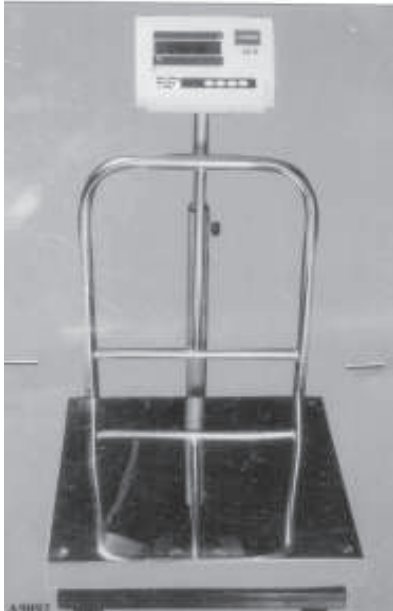
B.N. DIXIT, Director of Legal Metrology

नई दिल्ली, 12 अक्टूबर, 2010

का.आ. 3173.—केन्द्रीय सरकार का, विहित प्राधिकारी द्वारा जारी मॉडल अनुमोदन प्रमाण पत्र के साथ उसे प्रस्तुत रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित मॉडल (नीचे दी गई आकृति देखें) बाट और माप मानक अधिनियम, 1976 (1976 का 60) तथा बाट और माप मानक (मॉडलों का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप है और इस बात की संभावना है कि लगातार प्रयोग की अवधि में भी उक्त मॉडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा प्रदान करता रहेगा;

अतः अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उप-धारा (7) और उप-धारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मैसर्स वामन इंस्ट्रूमेंट्स कंपनी, 4090, चौथा तल, भंडुप इंडस्ट्रियल एस्टेट, पन्नालाल कंपाउंड, एल बी एस मार्ग, भंडुप, मुंबई-400078 द्वारा विनिर्मित मध्यम यथार्थता (यथार्थता वर्ग III) वाले “वी पी” श्रृंखला के अंकक सूचन सहित अस्वचालित तोलन उपकरण (प्लेटफार्म प्रकार) के मॉडल का, जिसके ब्रांड का नाम “वामन” है (जिसे इसमें इसके पश्चात् उक्त मॉडल कहा गया है) और जिसे अनुमोदन चिह्न आई एन डी/09/10/135 समनुदेशित किया गया है, अनुमोदन प्रमाण पत्र जारी करती है।

उक्त मॉडल एक विकृत गेज प्रकार का भार सेल आधारित अस्वचालित तोलन उपकरण (प्लेटफार्म प्रकार) है। इसकी अधिकतम क्षमता 500 कि.ग्रा. और न्यूनतम क्षमता 2 कि.ग्रा. है। सत्यापन मापमान अन्तराल (ई) 100 ग्रा. है। इसमें एक आधेयतुलन युक्ति है जिसका शत प्रतिशत व्यवकलनात्मक धारित आधेयतुलन प्रभाव है। प्रकाश उत्सर्जक डायोड (एल ई डी) प्रदर्श तोलन परिणाम उपदर्शित करता है। उपकरण 230 वोल्ट और 50 हर्ट्ज प्रत्यावर्ती धारा विद्युत प्रदाय पर कार्य करता है।



आकृति-2 : मॉडल को सीलिंग करने का योजनाबद्ध डायग्राम

स्केल की बाडी में दिए गए होल्ज में से सीलिंग वायर निकाल कर सीलिंग की गई है। मॉडल को सीलबंद करने के उपबंध का एक प्ररूपी योजनाबद्ध डायग्राम ऊपर दिया गया है।

उपकरण में बाहरी केलिब्रेशन तक पहुंच की सुविधा है। बाहरी केलिब्रेशन तक पहुंच को रोकने के लिए ए/डी कार्ड/मदर बोर्ड में डिप स्विच भी दिया गया है।

और केन्द्रीय सरकार उक्त अधिनियम की धारा 36 की उप-धारा (12) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि उक्त मॉडल के अनुमोदन के इस प्रमाणपत्र के अंतर्गत उसी विनिर्माता द्वारा उसी सिद्धांत, डिजाइन के अनुसार और उसी सामग्री से जिससे उक्त अनुमोदित मॉडल विनिर्माण किया गया है, विनिर्मित उसी श्रृंखला के वैसे ही मेक, यथार्थता और कार्यपालन के तोलन उपकरण भी होंगे जो 5 ग्रा. या उससे अधिक के “ई” मान के लिए 500 से 10,000 तक के रेंज में सत्यापन मापमान अंतराल (एन) सहित 50 कि.ग्रा. से 5000 कि.ग्रा. तक की अधिकतम क्षमता वाले हैं और “ई” मान 1×10^3 , 2×10^3 या 5×10^3 के हैं, जो धनात्मक या ऋणात्मक पूर्णांक या शून्य के समतुल्य हैं।

[फा.सं. डब्ल्यू एम-21(105)/2010]

बी.एन. दीक्षित, निदेशक, विधिक माप विज्ञान

New Delhi, the 12th October, 2010

S.O. 3173.—Whereas the Central Government, after considering the report submitted to it by prescribed authority, is satisfied that the model described in the said report (see the figure given below) is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said model is likely to maintain its accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by sub-sections (7) and (8) of Section 36 of the said Act, the Central Government hereby issues and publishes the certificate of approval of the model of non-automatic weighing instrument (Platform type) with digital indication of Medium Accuracy (Accuracy class-III) of series "VP" and with brand name "VAMAN" (hereinafter referred to as the said model), manufactured by M/s Vaman Instruments Company, 4090, 4th Floor, Bhandup Industrial Estate, Pannalal Compound, L.B.S. Marg, Bhandup, Mumbai- 400078 which is assigned the approval mark IND/09/10/135

The said model is a strain gauge type load cell based non-automatic weighing instrument (Platform type) with a maximum capacity of 500 kg. and minimum capacity of 2 kg. The verification scale interval (e) is 100g. It has a tare device with a 100 percent subtractive retained tare effect. The light emitting diode (LED) display indicates the weighing result. The instrument operates on 230 Volts, 50 Hertz alternative current power supply.

Figure-1 Model

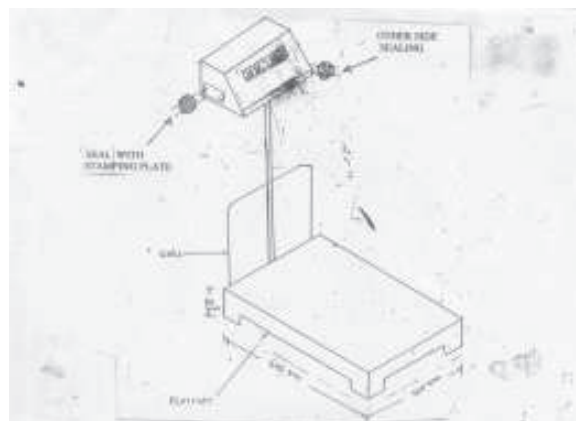
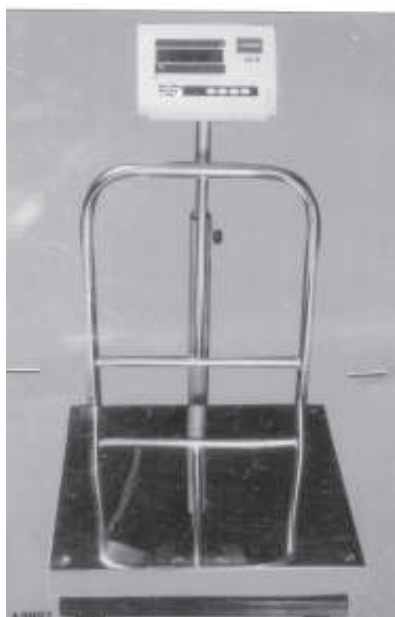


Figure-2 : Schematic diagram of sealing provision of the model.

Sealing is done by passing the sealing wire from the body of the scale through holes. A typical schematic diagram of sealing provision of the model is given above.

The instrument has external control to calibration. A dip switch has also been provided in A/D card/mother board to disable access to external calibration.

Further, in exercise of the power conferred by sub-section (12) of section 36 of the said Act, the Central Government hereby declares that this certificate of approval of the said model shall also cover the weighing instruments of similar make, accuracy and performance of same series with maximum capacity above 50 kg. up to 5000kg. with verification scale interval (n) in the range of 500 to 10,000 for 'e' value of 5g or more and with 'e' value of 1×10^k , 2×10^k or 5×10^k , where k is a positive or negative whole number or equal to zero manufactured by the same manufacturer in accordance with the same principle, design and with the same materials with which, the said approved model has been manufactured.

[F.No. WM-21(105)/2010]

B.N. DIXIT, Director of Legal Metrology

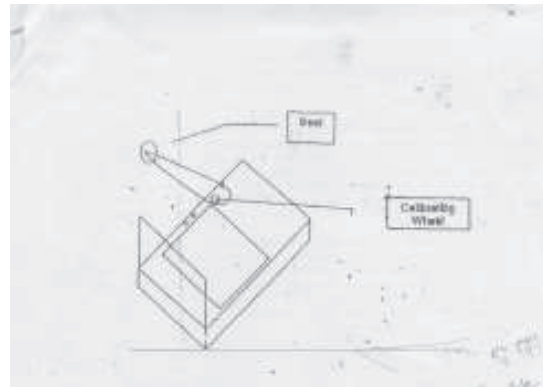
नई दिल्ली, 18 अप्रैल, 2010

का.आ. 3174.—केन्द्रीय सरकार का, विहित प्राधिकारी एनडब्ल्यूएमएल, मिडलसैक्स, यूनाइटेड किंगडम द्वारा जारी मॉडल अनुमोदन प्रमाण-पत्र के साथ उसे प्रस्तुत रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित मॉडल (नीचे दी गई आकृति देखें) बाट और माप मानक अधिनियम, 1976 (1976 का 60) तथा बाट और माप मानक (मॉडलों का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप है और इस बात की संभावना है कि लगातार प्रयोग की अवधि में भी उक्त मॉडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा प्रदान करता रहेगा;

अतः अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उप-धारा (7) और उप-धारा (8) द्वारा शक्तियों को प्रयोग करते हुए मैसर्स एनसीआर कॉरपोरेशंस, 2651, सेटेलाइट बी.एल.वी.डी. डुलुथ, जिओर्जिया, 30096, यू.एस.ए. द्वारा विनिर्मित मध्यम यथार्थता (यथार्थता III) वाले “रियलस्केन 7874-5000” शृंखला के अंकक सूचन सहित अस्वचालित तोलन उपकरण (टेबलटाप प्रकार) के मॉडल का, जिसके ब्रांड का नाम “एनसीआर” है (जिसे इसमें इसके पश्चात् उक्त मॉडल कहा गया है) और जिसे मैसर्स एनसीआर कॉरपोरेशंस इंडिया प्रा. लि., फेयरमॉंट लेवल 5, हाई स्ट्रीट, हीरानन्दानी बिजनेस पार्क, पोवई मुंबई-400093, महाराष्ट्र द्वारा भारत में विपणीत किया गया है और जिसे अनुमोदन चिन्ह आईएनडी/09/10/323 समनुदेशित किया गया है, अनुमोदन प्रमाण-पत्र जारी करती है।

उक्त मॉडल एक विकृत गेज प्रकार का भार सेल आधारित अस्वचालित तोलन उपकरण (टेबलटाप प्रकार) है। इसकी अधिकतम क्षमता 15 कि.ग्रा. और न्यूनतम क्षमता 100 ग्रा. है। सत्यापन मापमान अंतराल (ई) 5 ग्रा. है, इसमें एक आधेयतुलन युक्ति है जिसका शत प्रतिशत व्यवकलनात्मक धारित आधेयतुलन प्रभाव है। लिक्विड क्रिस्टल डिप्लॉयड (एलसीडी) प्रदर्श तोलन परिणाम उपदर्शित करता है। उपकरण 230 वोल्ट और 50 हर्ट्ज प्रत्यावर्ती धारा विद्युत प्रदाय पर कार्य करता है।

आकृति 1



आकृति-2 मॉडल को सीलिंग करने का योजनाबद्ध डायग्राम

स्केल की बॉडी के छेदों में से सीलिंग वायर निकाल कर सीलिंग की जाती है। मॉडल को सीलबंद करने के उपबंध का एक प्ररूपी योजनाबद्ध डायग्राम ऊपर दिया गया है।

और केन्द्रीय सरकार उक्त अधिनियम की धारा 36 की उप-धारा (12) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि उक्त मॉडल के अनुमोदन के इस प्रमाण-पत्र के अंतर्गत उसी विनिर्माता द्वारा उसी सिद्धांत, डिजाइन के अनुसार और उसी सामग्री से जिससे उक्त अनुमोदित मॉडल विनिर्माण किया गया है, विनिर्मित उसी शृंखला के वैसे ही मेक, यथार्थता और कार्यपालन के तोलन उपकरण भी होंगे जो 1 मि.ग्रा. से 2 ग्रा. तक के “ई” मान के लिए 100 से 10000 तक के रेंज में सत्यापन मापमान अंतराल (एन) और 5 ग्रा. या उससे अधिक के “ई” मान के लिए 500 से 10,000 तक की रेंज में सत्यापन मापमान अंतराल (एन) सहित 15 कि.ग्रा. तक की अधिकतम क्षमता वाले हैं और “ई” मान 1×10^{-6} , 2×10^{-6} या 5×10^{-6} के हैं, जो धनात्मक या ऋणात्मक पूर्णांक या शून्य के समतुल्य हैं।

[फा.सं. डब्ल्यू एम-21(207)/2010]

बी. एन. दीक्षित, निदेशक, विधिक मान विज्ञान

New Delhi, the 18th April, 2010

S.O. 3174.—Whereas the Central Government, after considering the report submitted to it by the prescribed authority along with the Model approval certificate issued by the NWML, Middlesex, United Kingdom is satisfied that the model described in the said report (see the figure given below), is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said model is likely to maintain its accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by sub-sections (7) and (8) of Section 36 of the said Act, the Central Government hereby issues and publishes the certificate of approval of the model of non-automatic weighing instrument (Table top type) with digital indication of Medium Accuracy (Accuracy class-III) and series REALSCAN 7874-5000 with brand name “NCR” (hereinafter referred to as the said model), manufactured by M/s. NCR Corporation, 2651, Satellite Byd, Duluth, Georgia, 30096, USA and marketed in India by M/s. NCR Corporations India Pvt. Ltd., Fairmont Level 5, High Street, Hiranandani Business Park Powai Mumbai 400093 Maharashtra which is assigned the approval mark IND/09/10/323.

The said model is a strain gauge type load cell based non-automatic weighing instrument (Table top type) with a maximum capacity of 15kg and minimum capacity of 100 g. The verification scale interval (e) is 5g. It has a tare device with a 100 per cent Subtractive retained tare effect. The liquid crystal diode (LCD) indicates the weighing results. The instrument operates on 230 Volts, 50 Hertz alternative current power supply.

Figure-1 Model

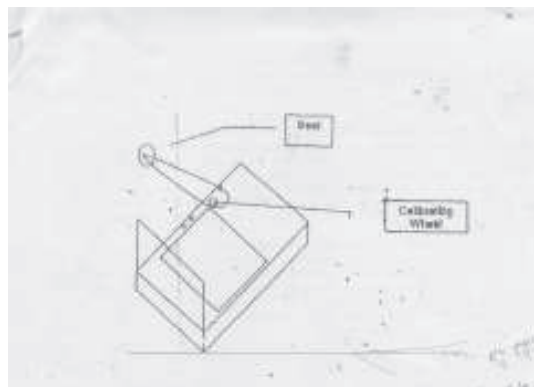


Figure-2 : Schematic diagram of sealing provision of the model

Sealing is done by passing the sealing wire from the body of the scale through holes. A typical schematic diagram of sealing provision of the model is given above.

Further, in exercise of the powers conferred by sub-section (12) of section 36 of the said Act, the Central Government hereby declares that this certificate of approval of the said Model shall also cover the weighing instruments of similar make and performance of same series with maximum capacity up to 15 kg. and with number of verification scale interval (n) in the range of 100 to 10000 for 'e' value of 1mg to 2g and with number of verification scale interval (n) in the range of 500 to 10,000 for 'e' value of 5g. or more and with 'e' value of 1×10^k , 2×10^k or 5×10^k , k being the positive or negative whole number or equal to zero manufactured by the same manufacturer in accordance with the same principle, design and with the same materials with which, the approved Model has been manufactured.

[F.No. WM-21(207)/2010]

B.N. DIXIT, Director of Legal Metrology

नई दिल्ली, 11 अक्टूबर, 2012

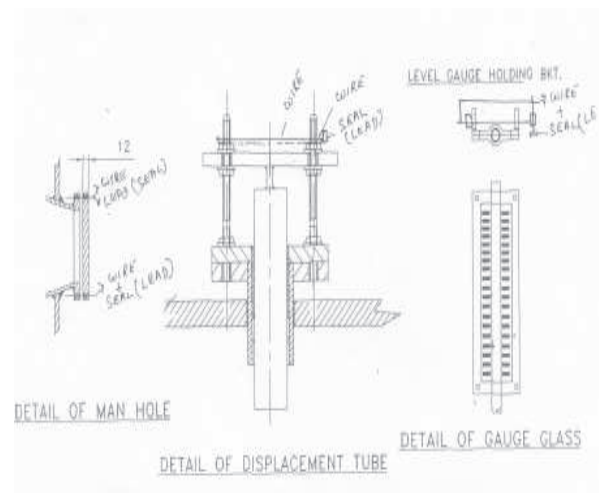
का.आ. 3175.—केन्द्रीय सरकार का, निर्धारित प्राधिकारी द्वारा उसे प्रस्तुत रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित मॉडल (नीचे दी गई आकृति देखें) विधिक माप विज्ञान अधिनियम, 2009 (2010 का 1) तथा विधिक माप विज्ञान (मॉडलों का अनुमोदन) नियम, 2011 के उपबंधों के अनुरूप है और इस बात की संभावना है कि लगातार प्रयोग की अवधि में भी उक्त मॉडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा प्रदान करता रहेगा;

अतः अब केन्द्रीय सरकार, विधिक माप विज्ञान (मॉडलों का अनुमोदन) नियम, 2011 के नियम 8 के उप-नियम (6) और नियम 11 के उप-नियम (4) के साथ पठित विधिक माप विज्ञान अधिनियम, 2009 (2010 का 1) की धारा 22 द्वारा शक्तियों को प्रयोग करते हुए मैसर्स एलकॉन कमर्शियल प्रा. लि., 106, राजा दिनेन्द्र स्ट्रीट, कोलकाता, पिन-700004, पश्चिम बंगाल द्वारा विनिर्मित मानक क्षमता मापन माडल (प्रोविंग मैजर) 'एलकॉन/पीएमटी' श्रृंखला और जिसके ब्रांड का नाम "एनकॉन" है (जिसे इसमें इसके पश्चात् उक्त मॉडल कहा गया है) और जिसे अनुमोदन चिह्न आईएनडी/09/12/182 समनुदेशित किया गया है, अनुमोदन प्रमाण पत्र जारी करती है।

उक्त मॉडल मानक क्षमता माप (प्रोविंग मैजर) है। इसकी नामिनल क्षमता 2000 लीटर है और अधिकतम अनुमेय त्रुटि $\pm 1/2000$ अंशांकन ग्लास ट्यूब के डिस्पले के साथ नामिनल क्षमता है।



आकृति-1



आकृति-2 मॉडल को सीलिंग करने का योजनाबद्ध डायग्राम

मॉडल को सीलबंद करने के उपबंध का एक प्ररूपी योजनाबद्ध डायग्राम उपरोक्त दिया गया है।

और केन्द्रीय सरकार विधिक माप विज्ञान (मॉडलों का अनुमोदन) नियम, 2011 के नियम 8 के उप-नियम (9) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि उक्त मॉडल के अनुमोदन के इस प्रमाण-पत्र के अंतर्गत उसी विनिर्माता द्वारा उसी सिद्धांत, डिजाइन के अनुसार और उसी सामग्री से जिससे उक्त अनुमोदित मॉडल का विनिर्माण किया गया है, विनिर्मित उसी श्रृंखला के वैसे ही मेक, यथार्थता और कार्यपालन के माप उपकरण (प्रोविंग मैजर) भी होंगे जिनकी अधिकतम अनुमेय त्रुटि $\pm 1/2000$ नामिनल क्षमता के 50 लीटर से 5000 लीटर तक है।

[फा. सं. डब्ल्यू.एम.-21(177)/2011]

बी. एन. दीक्षित, निदेशक, विधिक माप विज्ञान

New Delhi, the 11th October, 2012

S.O. 3175.—Whereas the Central Government, after considering the report submitted to it by prescribed authority, is satisfied that the model described in the said report (see the figure given below) is in conformity with the provisions of the Legal Metrology, 2009 (1 of 2010) and the Legal Metrology (Approval of Models) Rules, 2011 and the said model is likely to maintain its accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by section 22 of the Legal Metrology Act, 2009 (1 of 2010) read with sub-rule (6) of rule 8 and sub-rule (4) of rule 11 of the Legal metrology (Approval of Models) Rules, 2011, the Central Government hereby issues and publishes the certificate of approval of the Model of Standard capacity measure (Proving Measure) of series “ALECON/PMT” and with brand name “ALECON” (hereinafter referred to as the said model) manufactured by M/s. Alecon Commercial Private Limited, 106, Raja Dinendra Street, Kolkata, Pin-700004, West Bengal and which is assigned the approval mark IND/09/12/182;

The said model is a standard capacity measure (Proving Measure) of nominal capacity of 2000 litre and Maximum Permissible error is $\pm 1/2000$ of the nominal capacity with display consisting of graduated glass tube.



Figure-1 Model

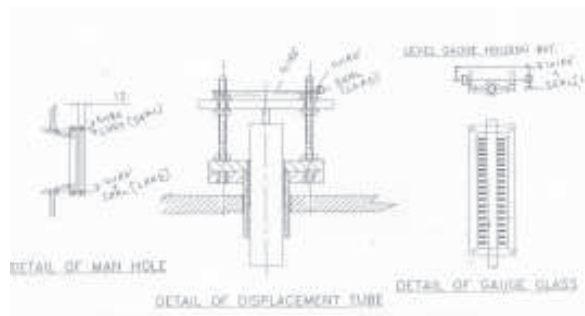


Figure-2 Schematic diagram of the sealing provision of the model.

A typical schematic diagram of sealing provision of the model is given above.

Further, in exercise of the power conferred by sub-rule (9) of rule 8 of the Legal Metrology (Approval of Models) Rules, 2011, the Central Government hereby declares that this certificate of approval of the said model shall also cover the measuring instruments (Proving Measure) of similar make, accuracy and performance of same series with maximum permissible error of $\pm 1/2000$ of the nominal capacity for capacity from 50 litre to 5,000 litre manufactured by the same manufacturer in accordance with the same principle, design and with the same materials with which, the said approved model has been manufactured.

[F.No. WM-21(177)/2011]

B.N. DIXIT, Director of Legal Metrology

(भारतीय मानक ब्यूरो)

नई दिल्ली, 4 अक्टूबर, 2012

का.आ. 3176.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं:—

अनुसूची

क्र.सं.	स्थापित भारतीय मानक(कों) की संख्या, वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आईएस 15934 (भाग 1): 2012/आईईसी 61747-1:2003 द्रव क्रिस्टल एवं टोस - अवस्था प्रदर्शन युक्तियाँ भाग 1 सामान्य विशिष्टि	—	मई 2012
2.	आईएस 15934 (भाग 2): 2012/आईईसी 61747-2:1998 द्रव क्रिस्टल एवं टोस - अवस्था प्रदर्शन युक्तियाँ भाग 2 द्रव क्रिस्टल प्रदर्शन माड्यूल - विषय विशिष्टि	—	जुलाई 2012
3.	आईएस 12193 (भाग 3): 2012/आईईसी 60315-4:1997 विभिन्न उत्सर्जन वर्गों के लिए रेडियो रिसेवरों की मापन पद्धतियां भाग 3 आवृत्ति-माड्यूलित ध्वनि प्रसारण उत्सर्जन के लिए रिसेवर (पहला पुनरीक्षण)	—	जुलाई 2012
4.	आईएस 13987 (भाग 1): 2012/आईईसी 611141-1:1999 11/12 GHz बैंड में उपग्रह प्रसारण प्रेषण के लिए अभिग्राही एंटीना भाग 1 विद्युतीय मापन (पहला पुनरीक्षण)	—	अगस्त 2012
5.	आईएस 14493 (भाग 7): 2012/आईईसी 61156-7:2003 डिजिटल संचारण के लिये बहुकोड और सममित पेयर/कवैड केबल भाग 7 1200 MHz तक संचरण लक्षण वाली सममित पेयर केबल - डिजिटल और एनालॉग संचारण केबलों की अनुभागीय विशिष्टि	—	जुलाई 2012
6.	आईएस 14686 (भाग 4): 2012/आईईसी 60966 - 4:2003 रेडियो बारम्बारता और समाक्ष केबल समुच्चय भाग 4 अर्ध-कठोर समाक्ष केबल समुच्चय के लिए अनुभागीय विशिष्टि	—	जुलाई 2012
7.	आईएस 14700 (भाग 4): 2012/आईईसी 61000-4-5:2005 विद्युत चुम्बकीय संगतता (ई एम सी) भाग 4 परीक्षण और मापन तकनीकें अनुभाग 5 सर्ज प्रतिरक्षा परीक्षण	—	जुलाई 2012
8.	आईएस 15116:2012/आईएसओ/आईईसी 10116:2006 सूचना प्रौद्योगिकी - सुरक्षा तकनीक - n-बिट ब्लॉक सिफर के प्रचालन प्रकार (पहला पुनरीक्षण)	—	जुलाई 2012

(1)	(2)	(3)	(4)
9.	आईएस/आईएसओ/आईईसी 24762:2008 सूचना प्रौद्योगिकी - सुरक्षा तकनीक - सूचना एवं संचार प्रौद्योगिकी के विनाश रिकवरी सेवाओं के लिए दिशानिर्देश	—	जुलाई 2012
10.	आईएस/आईएसओ/आईईसी 27000:2009 सूचना प्रौद्योगिकी - सुरक्षा तकनीक - सूचना सुरक्षा प्रबंधन प्रणालियां - समीक्षा और शब्दावली	—	जुलाई 2012
11.	आईएस/आईएसओ/आईईसी 27003:2010 सूचना प्रौद्योगिकी - सुरक्षा तकनीक - सूचना सुरक्षा प्रबंध प्रणाली परिपालन मार्गदर्शन	—	जुलाई 2012
12.	आईएस/आईएसओ/आईईसी 27004:2009 सूचना प्रौद्योगिकी - सुरक्षा तकनीक - सूचना सुरक्षा प्रबंध मापन	—	जुलाई 2012
13.	आईएस/आईएसओ/आईईसी 27005:2008 सूचना प्रौद्योगिकी - सुरक्षा तकनीक - सूचना सुरक्षा जोखिम प्रबंध	—	जुलाई 2012
14.	आईएस 14624 (भाग 2):2012/आईईसी 60825-2:2005 लेज़र उत्पाद की सुरक्षा भाग 2 प्रकाशित फाइबर संचार पद्धति की सुरक्षा प्रणालियां (ओएफसीएस) (पहला पुनरीक्षण)	—	अगस्त 2012
15.	आईएस 14976:2012/आईईसी 61315:2005 प्रकाशिक तंतु पावर मीटरों का अंशशोधन (पहला पुनरीक्षण)	—	अगस्त 2012
16.	आईएस 15077 (भाग 1):2012/आईईसी 62007-1:2008 प्रकाशिक तंतु निकाय में अनुप्रयोगों के लिए अद्विचालक आप्टोइलैक्ट्रॉनिकी युक्तियाँ भाग 1 अनिवार्य रेटिंग एवं लक्षण के लिए विशिष्ट टेम्पलेट विशिष्ट (प्रथम पुनरीक्षण)	—	अगस्त 2012
17.	आईएस 15077 (भाग 2):2012/आईईसी 62007-2:2008 प्रकाशिक तंतु निकाय में अनुप्रयोगों के लिए अद्विचालक आप्टोइलैक्ट्रॉनिकी युक्तियाँ भाग 2 मापन पद्धतियाँ (प्रथम पुनरीक्षण)	—	सितम्बर 2012
18.	आईएस/आईईसी 60862-1:2003 ध्वनि संबंधी सतह तरंग (एस ए डब्ल्यू) फिल्टर की निर्धारित गुणता भाग 1 वर्गीय विशिष्ट	—	जुलाई 2012

इस भारतीय मानक की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन 9 बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों, नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पुणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ : एल आई टी डी/जी-75]

पी. राधाकृष्णा, वैज्ञानिक 'एफ' एवं प्रमुख (इलैक्ट्रॉनिकी एवं आई टी)

(BUREAU OF INDIAN STANDARDS)

New Delhi, the 4th October, 2012

S.O. 3176.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each :

SCHEDULE

Sl. No.	No. and year of the Indian Standards Established	No. and year of Indian Standards, if any, Superseded by the New Indian Standard	Date of Established
(1)	(2)	(3)	(4)
1.	IS 15934 (part 1): 2012/IEC 61747-1: 2003 Liquid crystal and solid-state display devices Part 1 : Generic specification	-	May 2012
2.	IS 15934: 2012 (Part 2): 2012/IEC 61747-2: 1998 Liquid Crystal and Solid-State Display Devices Part 2 : Liquid crystal display modules-Sectional specification	-	July 2012
3.	IS 12193 (Part 3) : 2012/IEC 60315-4: 1997 Methods of measurement on radio receivers for various classes of emission Part 3 Receivers for frequency-modulated sound broadcasting emissions (<i>First Revision</i>)	-	July 2012
4.	IS 13987 (Part 1): 2012/IEC 61114-1: 1999 Receiving Antennas For Satellite Broadcast Transmissions in the 11/12 GHz Band Part 1 Electrical Measurements (<i>First Revision</i>)	-	August 2012
5.	IS 14493 (Part 7): 2012/IEC 61156-7: 2003 Multicore And Symmetrical Pair/Quad Cables for Digital Communications Part 7 Symmetrical Pair Cables With Transmission Characteristics Up to 1 200 MHz- Sectional Specification for Digital and Analog Communication Cables	-	July 2012
6.	IS 14686 (Part-4): 2012/IEC 60966-4: 2003 Radio frequency and coaxial cable assemblies-Part 4: Sectional specification for semi-rigid coaxial cable assemblies	-	July 2012
7.	IS 14700 (Part 4/Sec 5): 2012/IEC 61000-4-5: 2005 Electromagnetic compatibility (EMC)-Part 4: Testing and Measurement Techniques Section 5 Surge Immunity Test	-	July 2012
8.	IS 15116: 2012/ISO/IEC 10116: 2006 Information technology-Security techniques-Modes of operation for an <i>n</i> -bit block cipher (<i>First Revision</i>)	-	July 2012
9.	IS/ISO/IEC 24762: 2008 Information technology-Security techniques-Guidelines for information and communications technology disaster recovery services	-	July 2012

(1)	(2)	(3)	(4)
10.	IS/ISO/IEC 27000: 2009 Information technology-Security Techniques-Information security management systems-Overview and vocabulary	-	July 2012
11.	IS/ISO/IEC 27003: 2010 Information technology-Security Techniques-Information security management system implementation guidance	-	July 2012
12.	IS/ISO/IEC 27004: 2009 Information technology-Security Techniques-Information security management-Measurement	-	July 2012
13.	IS/ISO/IEC 27005: 2008 Information technology-Security Techniques-Information security risk management	-	July 2012
14.	IS 14624: (Part 2): 2012/IEC 60825-2: 2005 Safety of laser products-Part 2: Safety optical fibre communication systems (OFCS) (First Revision)	-	August 2012
15.	IS 14976: 2012/IEC 61315: 2005 Calibration of fibre-optic power meters (First Revision)	-	August 2012
16.	IS 15077 (Part 1): 2012/IEC 62007-1: 2008 Semiconductor Optoelectronic Devices for Fibre Optic System Applications-Part 1: Specification Template for Essential Ratings and Characteristics (<i>First Revision</i>)	-	August 2012
17.	IS 15077: (Part 2): 2012/IEC 62007-2: 2009 Semiconductor Optoelectronic Devices for Fibre Optic System Applications-Part 2: Part 2: Measuring Methods (<i>First Revision</i>)	-	September 2012
18.	IS/IEC 60862-1: 2003 Surface acoustic wave (SAW) filters of assessed quality Part 1 Generic Specification	-	July 2012

Copies of these Standards are available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices: New Delhi, Kolkata Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref. : LITD/G-75]

P. RADHAKRISHNA, Scientist 'F' & Head (LITD)

नई दिल्ली, 8 अक्टूबर, 2012

का.आ. 3177.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) में खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद् द्वारा अधिसूचित करता है कि अधिसूची में दिये गये मानक(कों) में संशोधन किया गया/किये गये हैं:

क्र०सं०	संशोधित भारतीय मानक(कों)की संख्या, वर्ष और शीर्षक	संशोधन की संख्या और तिथि	संशोधन लागू होने की तिथि
(1)	(2)	(3)	(4)
1.	आईएस 1161:1998 इस्पात नलिकाएं संरचनात्मक उपयोगों के लिये - विशिष्टि (चौथा पुनरीक्षण)	संशोधन संख्या 5 सितम्बर, 2012	04 अक्टूबर, 2012
2.	आईएस 1239 (Part 2):2011 - इस्पात की नलियां, नलिकाकार सामग्रियां तथा इस्पात की अन्य फिटिंगें - विशिष्टि भाग-2 इस्पात की पाईप फिटिंगें (पांचवां पुनरीक्षण)	संशोधन संख्या 1 सितम्बर, 2012	04 अक्टूबर, 2012
3.	आईएस 3601:2006 यांत्रिकीय और सामान्य इंजीनियरिंग उद्देश्य के लिए इस्पात नलिकाएं - विशिष्टि (दूसरा पुनरीक्षण)	संशोधन संख्या 1 सितम्बर, 2012	04 अक्टूबर, 2012

इस संशोधन की प्रति भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, पटना, पुणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ: एमटीडी 19/टी-2, 31, 3]

पी. घोष, वैज्ञानिक 'एफ' एवं प्रमुख (एमटीडी)

New Delhi, the 8th October, 2012

S.O. 3177.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Amendment, Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each:

SCHEDULE

Sl. No.	IS No. & Title of the amendment(s)	No. & year of the amendment	Date from which the amendment shall have effect
(1)	(2)	(3)	(4)
1.	IS 1161:1998 Steel tubes for structural purposes - Specification (<i>fourth revision</i>)	Amendment No. 5 September, 2012	04 October, 2012
2.	IS 1239 (Part 2):2011 Steel tubes, tubulars and other steel fittings - Specification Part-2 Steel pipe fittings (<i>fifth revision</i>)	Amendment No. 1 September, 2012	04 October, 2012
3.	IS 3601:2006 Steel tubes for mechanical and general engineering purposes - Specification (<i>second revision</i>)	Amendment No. 1 September, 2012	04 October, 2012

Copy of this amendment is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref.: MTD 19/T-2, 31, 3]

P. GHOSH, Scientist 'F' & Head (Met. Engg.)

नई दिल्ली, 8 अक्टूबर, 2012

का.आ. 3178.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद् द्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं:-

अनुसूची

क्र.सं.	स्थापित भारतीय मानक(कों)की संख्या, वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आईएस 2034:2012 मक्खन और पनीर के लिए गोल खुले शीर्ष स्वास्थ्यकर डिब्बे - विशिष्टि (दूसरा पुनरीक्षण)	आईएस 2034:1987 मक्खन और पनीर के लिए गोल खुले शीर्ष स्वास्थ्यकर डिब्बे - विशिष्टि (पहला पुनरीक्षण)	30-09-2012
2.	आईएस 11078:2012 दूध पाउडर के लिए खुले उपरी सेनेटरी डिब्बे - विशिष्टि (दूसरा पुनरीक्षण)	आईएस 11078:1993 दूध पाउडर के लिए खुले उपरी सेनेटरी डिब्बे - विशिष्टि (पहला पुनरीक्षण)	30-09-2012
3.	आईएस 11104:2012 उपरी खुले हुए सेनेटरी डिब्बों से संबंधित प्रयुक्त शब्दावलि (पहला पुनरीक्षण)	आईएस 11104:1984 उपरी खुले हुए सेनेटरी डिब्बों से संबंधित शब्दावलियां	30-09-2012

इस भारतीय मानक की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पुणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ: एमटीडी 32/टी-3, 7, 33]

पी० घोष, वैज्ञानिक 'एफ' एवं प्रमुख (एमटीडी)

New Delhi, the 8th October, 2012

S.O. 3178.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule here to annexed have been established on the date indicated against each:

SCHEDULE

Sl. No.	No. & year of the Indian Standards Established	No. & year of the Indian Standards, if any Superseded by the New Indian Standard	Date of Established
(1)	(2)	(3)	(4)
1.	IS 2034:2012 Round open top sanitary cans for butter and cheese - Specification (second revision)	IS 2034:1987 Round open top sanitary cans for butter and cheese - Specification (first revision)	30-09-2012
2.	IS 11078:2012 Round open top sanitary cans for milk powder - Specification (second revision)	IS 11078:1993 Round open top sanitary cans for milk powder - Specification (first revision)	30-09-2012
3.	IS 11104:2012 Glossary of terms relating to open top sanitary cans (first revision)	IS 11104:1984 Glossary of terms relating to open top sanitary cans	30-09-2012

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref.: MTD 32/T-3, 7, 33]

P. GHOSH, Scientist 'F' & Head (MTD)

नई दिल्ली, 8 अक्टूबर, 2012

का.आ. 3179.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) में खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिस भारतीय मानक का विवरण नीचे अनुसूची में दिया गया है वह स्थापित हो गया है:—

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक (कों) की संख्या वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आईएस/आईईसी 60071-2:1996 ऊष्मारोधन समन्वयन भाग 2	-	29-08-2012
अनुप्रयोग की मार्गदर्शिका			

इस भारतीय मानक की एक प्रति भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों: नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों: अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ: ईटी 19/टी-22]

आर.सी. मैथ्यू वैज्ञानिक 'एफ' एवं प्रमुख (विद्युत तकनीकी)

New Delhi, the 8th October, 2012

S.O. 3179.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies the Indian Standards, particulars of which is given in the Schedule hereto annexed has been issued:—

SCHEDULE

Sl. No.	No. & Year of the Indian Standard	No. & year of the Indian Standards, if any, Superseded by the New Indian Standard	Date of Establishment
(1)	(2)	(3)	(4)
1.	IS/IEC 60071-2:1996 Insulation Coordination Part 2: Application Guide	-	29-08-2012

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref.: ET 19/T-22]

R.C. MATHEW, Scientist 'F' & Head (Electrotechnical)

नई दिल्ली, 8 अक्टूबर, 2012

का.आ. 3180.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) में खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिस भारतीय मानक का विवरण नीचे अनुसूची में दिया गया है वह स्थापित हो गया है:—

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक (कों) की संख्या वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आईएस/आईईसी 13730 (भाग 12) : 2012 विशेष प्रकार की कुंडलण तारों की विशिष्टि भाग 12 पोलीविनाइल एसीटल अनेमलित गोल कॉपर की तारें, वर्ग 120	-	29.08.2012

इस भारतीय मानक की एक प्रति भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों: नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों: अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ: ईटी 33/टी-115]

आर.सी. मैथ्यू वैज्ञानिक 'एफ' एवं प्रमुख (विद्युत तकनीकी)

New Delhi, the 8th October, 2012

S.O. 3180.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of India Standards Rules, 1987, the Bureau of Indian Standards hereby notifies the Indian Standards, particulars of which is given in the Schedule hereto annexed has been issued:—

SCHEDULE

Sl. No.	No. & Year of the Indian Standard	No. & year of the Indian Standards, Establishment if any, Superseded by the New Indian Standard	Date of
(1)	(2)	(3)	(4)
1.	IS/IEC 13730 (Part 12) :2012 Specifications for Particular Types of Winding Wires, Part 12 Polyvinyl Acetal Enamelled Round Copper Wire, Class 120	—	29-08-2012

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref.: ET 33/T-115]

R.C. MATHEW, Scientist 'F' & Head (Electrotechnical)

नई दिल्ली, 8 अक्टूबर, 2012

का.आ. 3181.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिस भारतीय मानक का विवरण नीचे अनुसूची में दिया गया है वह स्थापित हो गया है:—

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक (को) की संख्या वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आई. एस./आई.ई.सी. 62056-53:2006 विद्युत मीटरिंग-मीटर रीडिंग, शुल्क और लघु नियंत्रण के लिए ऑकड़ों का विनिमय भाग 53: सी० ओ० एस० इ० एम० अनुप्रयोग संस्तर	—	29-08-2012

इस भारतीय मानक की एक प्रति भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों: नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुंबई तथा शाखा कार्यालयों: अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पुणे तथा तिरुवनन्तापुरम में विक्री हेतु उपलब्ध हैं।

[संदर्भ: ईटी 13/टी-51]

आर. सी. मैथ्यू, वैज्ञानिक 'एफ' एवं प्रमुख (विद्युत तकनीकी)

New Delhi, the 8th October, 2012

S.O. 3181.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies the Indian Standards, particulars of which is given in the Schedule hereto annexed has been issued:—

SCHEDULE

Sl. No.	No. & Year of the Indian Standard	No. & year of the Indian Standards, Establishment if any, Superseded by the New Indian Standard	Date of
(1)	(2)	(3)	(4)
1.	IS/IEC 62056-53:2006 Electricity Metering—Data Exchange for Meter Reading Tariff, and Load Control—Part 53: Cosem Application Layer	—	29-08-2012

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref.: ET 13/T-51]

R.C. MATHEW, Scientist 'F' & Head (Electrotechnical)

नई दिल्ली, 8 अक्टूबर, 2012

का.आ. 3182.— भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिस भारतीय मानक का विवरण नीचे अनुसूची में दिया गया है वह वह स्थापित हो गया है:—

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक (कों की संख्या वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आई० एस्० 13778 (भाग 3): 2012 वेस्टन - परीक्षण पद्धतियाँ भाग 3 यांत्रिक गुण-धर्म (पहला पुनरीक्षण)	—	29-08-2012
2.	आई० एस्० 13778 (भाग 5): 2012 वेस्टन - परीक्षण पद्धतियाँ भाग 5 विद्युत गुण-धर्म (पहला पुनरीक्षण)	—	29-08-2012

इस भारतीय मानक की एक प्रति भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों: नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों: अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पुणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ: ईटी- 33/टी-109, टी-117]

आर. सी. मैथ्यू, वैज्ञानिक 'एफ' एवं प्रमुख (विद्युत तकनीकी)

New Delhi, the 8th October, 2012

S.O. 3182 .—In pursuance of clause (b) of sub-rule (1) of of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies the Indian Standards, particulars of which is given in the Schedule hereto annexed has been issued:—

SCHEDULE

Sl. No.	No. & Year of the Indian Standard	No. & year of the Indian Standards, if any, Superseded by the New Indian Standard	Date of Establishment
(1)	(2)	(3)	(4)
1	IS 13778 (Part 3): 2012 Winding—Wires—Test Methods, Part 3 Mechanical Properties (First Revision)	—	29-08-2012

2 IS 13778 (Part 5): 2012 — 29-08-2012
Winding Wires—Test
Methods, Part 5
Electrical Properties
(First Revision)

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref. : ET 33/T-109, T-117]

R.C. MATHEW, Scientist 'F' & Head (Electrotechnical)

कोयला मंत्रालय

आदेश

नई दिल्ली, 15 अक्टूबर, 2012

का.आ. 3183.—कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 9 की उपधारा (1) के अधीन जारी भारत के राजपत्र, भाग-II, खंड 3, उपखंड (ii), तारीख 11 सितम्बर से 17 सितम्बर, 2011 के प्रकाशन होने पर भारत सरकार के कोयला मंत्रालय की अधिसूचना का. आ. संख्यांक 2525, दिनांक 13 सितम्बर, 2011 पर उक्त अधिसूचना से संलग्न अनुसूची में वर्णित भूमि (जिसे इसमें इसके पश्चात् उक्त भूमि कहा गया है) में खान, खुदाई करने, बोर करने, खोजने और खनिज का पता लगाने, कार्य करने और ले जाने का अधिकार, उक्त अधिनियम की धारा 10 की उप-धारा (1) के अधीन, सभी विल्लंगमों से मुक्त होकर, आत्यंतिक रूप में केन्द्रीय सरकार में निहित हो गए थे;

और, केन्द्रीय सरकार का यह समाधान हो गया है, कि वेस्टर्न कोलफील्ड्स लिमिटेड, नागपुर (महाराष्ट्र) (जिसे इसमें इसके पश्चात् उक्त कंपनी कहा गया है), ऐसे निबंधनों और शर्तों को, जिनको केन्द्रीय सरकार इस निमित्त अधिरोपित करना उचित समझे, अनुपालन करने के लिए रजामंद है;

अतः अब, केन्द्रीय सरकार उक्त अधिनियम की धारा 11 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निर्देश देती है, कि उक्त भूमि में या उस पर इस प्रकार निहित सभी अधिकार तारीख 17 सितम्बर, 2011 से केन्द्रीय सरकार में इस प्रकार निहित बने रहने के बजाए, निम्नलिखित निबंधनों और शर्तों के अधीन रहते हुए, सरकारी कंपनी में निहित हो जाएंगे, अर्थात्:—

- सरकारी कंपनी, उक्त अधिनियम के उपबंधों के अधीन यथा अवधारित प्रतिकर, ब्याज, नुकसानियों और वेसी ही मंदों की बाबत किए गए संदायों की केन्द्रीय सरकार को प्रतिपूर्ति करेगी;
- उक्त सरकारी कंपनी द्वारा शर्त (1) के अधीन, केन्द्रीय सरकार को संदेय रकमों का अवधारण करने के प्रयोजन के लिए उक्त

अधिनियम की धारा 14 के अधीन एक अधिकरण का गठन किया जाएगा और ऐसे किसी अधिकरण और अधिकरण की सहायता के लिए नियुक्त व्यक्तियों के संबंध में उपगत सभी व्यय, सरकारी कंपनी द्वारा वहन किए जाएंगे और इस प्रकार निहित उक्त भूमि में या उस पर के अधिकारों के लिए या उनके संबंध में अपीलें आदि जैसी सभी विधिक कार्यवाहियों की बाबत उपगत, सभी व्यय भी, सरकारी कंपनी द्वारा वहन किए जाएंगे;

3. सरकारी कंपनी, केन्द्रीय सरकार या उसके पदधारियों की, ऐसे किसी अन्य व्यय के संबंध में क्षतिपूर्ति करेगी, जो इस प्रकार निहित उक्त भूमि में या उस पर के पूर्वोक्त अधिकारों के बारे में, केन्द्रीय सरकार या उसके पदधारियों द्वारा या उनके विरुद्ध किन्हीं कार्यवाहियों के संबंध में आवश्यक हो;
4. सरकारी कंपनी को केन्द्रीय सरकार के पूर्व अनुमोदन के बिना, उक्त भूमि को किसी अन्य व्यक्ति को अंतरित करने की शक्ति नहीं होगी; और
5. सरकारी कंपनी, ऐसे निर्देशों और शर्तों को, जो केन्द्रीय सरकार द्वारा, जब कभी आवश्यक हो, उक्त भूमि के विशिष्ट क्षेत्रों के लिए लिए जाएं या अधिरोपित किए जाएं।

[फा. सं. 43015/27/2008-पी आर आई डब्ल्यू-1]
ए. के. दास, अवर सचिव

MINISTRY OF COAL

ORDER

New Delhi, the 15th October, 2012

S.O. 3183.—Whereas on the publication of the notification of the Government of India in the Ministry of Coal, number S.O. 2525, dated the 13th September, 2011, published in the Gazette of India, Part-II, Section 3, Sub-section (ii), dated the 11th September to 17th September, 2011, issued under sub-section (1) of section 9 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act), the lands and all rights in or over the land described in the Schedule appended to the said notification (hereinafter referred to as the said lands) are vested absolutely in the Central Government free from all encumbrances under sub-section (1) of section 10 of the said Act;

And, whereas, the Central Government is satisfied that the Western Coalfields Limited, Nagpur (Maharashtra) (hereinafter referred to as the Government Company) is willing to comply with such terms and conditions as the Central Government thinks fit to impose in this behalf;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 11 of the said Act, the Central Government hereby directs that the said lands and all rights in or over the said lands so vested shall, with effect from

the 17th September, 2011, instead of continuing to so vest in the Central Government, shall vest in the Government Company, subject to the following terms and conditions, namely:—

1. The Government Company shall reimburse to the Central Government all payments made in respect of compensation, interest, damages and the like, as determined under the provisions of the said Act;
2. A Tribunal shall be constituted under section 14 of the said Act, for the purpose of determining the amounts payable to the Central Government by the Government Company under condition (1) and all expenditure incurred in connection with any such tribunal and persons appointed to assist the tribunal shall be borne by the Government Company and similarly, all expenditure incurred in respect of all legal proceedings like appeals, etc., for or in connection with the rights in or over the said lands so vested, shall also be borne by the Government Company;
3. The Government Company shall indemnify the Central Government or its officials against any other expenditure that may be necessary in connection with any proceedings by or against the Central Government or its officials regarding the aforesaid rights in or over the said lands so vested;
4. The Government Company shall have no power to transfer the said lands and rights to any other person without the prior approval of the Central Government; and
5. The Government Company shall abide by such directions and conditions as may be given or imposed by the Central Government for particular areas of the said land as and when necessary.

[F.No. 43015/27/2008-PRIW-I]
A.K. DAS, Under Secy.

आदेश

नई दिल्ली, 16 अक्टूबर, 2012

का.आ. 3184.—कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 9 की उप-धारा (1) के अधीन जारी की गई भारत सरकार के कोयला मंत्रालय की अधिसूचना संख्यांक का. आ. 1775, तारीख 16 मई, 2012 के भारत के राजपत्र भाग II, खंड 3, उप-खंड (ii) तारीख 20 मई से 26 मई, 2012 में प्रकाशित होने पर उक्त अधिसूचना से संलग्न अनुसूची- 'क' में वर्णित 1.368 हेक्टर लगभग या 3.38 एकड़ लगभग भूमि तथा अनुसूची- 'ख' में वर्णित 5.981 हेक्टर (लगभग) या 14.78 एकड़ (लगभग) माप वाली उक्त भूमि में खनिजों के खनन, खदान, बोर करने, उनकी खुदाई करने और

तलाश करने, उन्हें प्राप्त करने, उन पर काम करने और उन्हें ले जाने के अधिकार (जिसे इसमें इसके पश्चात् उक्त भूमि कहा गया है) उक्त अधिनियम की धारा 10 की उप-धारा (1) के अधीन, सभी विल्लंगमों से मुक्त होकर, आत्यांतिक रूप में केन्द्रीय सरकार में निहित हो गए थे;

और केन्द्रीय सरकार का यह समाधान हो गया है कि ईस्टर्न कोलफील्ड्स लिमिटेड, सैक्टोरिया, डाकघर दिसेरगढ़, जिला बर्द्धवान-713333, पश्चिमी बंगाल (जिसे इसमें इसके पश्चात् सरकारी कम्पनी कहा गया है) ऐसे निबंधनों और शर्तों का जो केन्द्रीय सरकार इस निमित्त अधिरोपित करना उचित समझे, अनुपालन करने के लिए राजामंदी है;

अतः अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 11 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि इस प्रकार निहित उक्त भूमि और उस पर के सभी अधिकार, तारीख 26 मई, 2012 से केन्द्रीय सरकार में इस प्रकार निहित बने रहने की बजाय, निम्नलिखित निबंधनों और शर्तों के अधीन रहते हुए, उक्त कंपनी में निहित हो जाएंगे, अर्थात् :

- (1) सरकारी कम्पनी, उक्त अधिनियम के उपबंधों के अधीन यथा अवधारित प्रतिकर, ब्याज, नुकसानी और वैसी ही मदों की बाबत किए गए सभी संदायों की केन्द्रीय सरकार की प्रतिपूर्ति करेगी;
- (2) उक्त अधिनियम की धारा 14 के अधीन केन्द्रीय सरकार शर्त (1) के अधीन, कंपनी द्वारा को संदेय रकमों का अवधारण करने के प्रयोजनों के लिए एक अधिकरण का गठन किया जाएगा तथा ऐसे किसी अधिकरण और अधिकरण की सहायता करने के लिए नियुक्त व्यक्तियों के संबंध में उपगत सभी व्यय, उक्त कंपनी द्वारा वहन किये जायेंगे और इस प्रकार निहित उक्त भूमि में या उस पर के अधिकार के लिए या उसके संबंध में जैसे अपील आदि सभी विधिक कार्यवाहियों की बाबत उपगत, सभी व्यय भी, इसी प्रकार उक्त कंपनी द्वारा वहन किये जायेंगे;
- (3) सरकारी कंपनी, केन्द्रीय सरकार या उसके पदधारियों की, ऐसे अन्य व्यय के संबंध में, क्षतिपूर्ति करेंगी जो इस प्रकार निहित उक्त भूमि में या उस पर के अधिकारों के बारे में, केन्द्रीय सरकार या उसके पदधारियों द्वारा या उनके विरुद्ध किन्हीं कार्यवाहियों के संबंध में आवश्यक हो;
- (4) सरकारी कंपनी को, केन्द्रीय सरकार के पूर्व अनुमोदन के बिना, उक्त भूमि और भूमि में या उसके ऊपर इस प्रकार निहित अधिकार को किसी अन्य व्यक्ति को अंतरित करने की शक्ति नहीं होगी; और
- (5) सरकारी कंपनी, ऐसे निदेशों और शर्तों को, जो केन्द्रीय सरकार द्वारा, जब कभी आवश्यक हो, उक्त भूमि के विशिष्ट क्षेत्रों के लिए दिए जाएं या अधिरोपित किये जाएं, पालन करेगी।

[फा.सं. 43015/1/2009-पीआरआईडब्ल्यू-I]

ए.के. दास, अवर सचिव

ORDER

New Delhi, the 16th October, 2012

S.O. 3184.—Whereas on the publication of the notification of the Government of India in the Ministry of Coal, number S.O. 1775, dated the 16th May, 2012, published in the Gazette of India, Part II, Section 3, Sub-section (ii), dated the 20th May to 26th May, 2012, issued under sub-section (1) of section 9 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act), all rights in or over 1.368 hectares (approximately) or 3.38 acres (approximately) of land mentioned in Schedule 'A' and mining rights for mining, quarry bore, dig and search for win, work and carry away minerals in the land measuring 5.981 hectares (approximately) or 14.78 acres (approximately) of land mentioned in Schedule 'B' appended to the said notification (hereinafter referred to as the said lands) vested absolutely in the Central Government free from all encumbrances under sub-section (1) of section 10 of the said Act;

And, whereas, the Central Government is satisfied that the Eastern Coalfields Limited, Sanctoria, Post Office Dishergarh, District-Burdwan-713 333, West Bengal (hereinafter referred to as the Government Company) is willing to company with such terms and conditions as the Central Government thinks fit to impose in this behalf;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 11 of the said Act, the Central Government hereby direct that the said lands and rights in or over the said lands so vested shall with effect from 26th May, 2012 instead of continuing to so vest in the Central Government shall vest in the Government Company, subject to the following terms and conditions, namely:—

- (1) The Government Company shall reimburse to the Central Government all payments made in respect of compensation, interest, damages and the like as determined under the provisions of the said act;
- (2) A tribunal shall be constituted for the under section 14 of the said Act, for the purpose of determining the amounts payable to the Central Government by the Government Company under condition (1) and all expenditure incurred in connection with any such tribunal and persons appointed to assist the tribunal shall be borne by the Government Company and similarly all expenditure incurred in respect of all legal proceedings like appeals etc., for or in connection with the rights in or over the said lands so vested, shall also be borne by the Government Company;
- (3) The Government Company shall indemnify the Central Government or its officials against any others expenditure that may be necessary in connection with any proceedings by or against the Central

Government or its officials, regarding the aforesaid rights in or over the said lands so vested;

- (4) The Government Company shall have no power to transfer the said lands and the rights to any other person without the prior approval of the Central Government; and
- (5) The Government Company shall abide by such directions and conditions as may be given or imposed by the Central Government for particular areas of the said land, as and when necessary.

[F.No. 43015/1/2009-PRIW-I]

A. K. DAS, Under Secy.

नई दिल्ली, 16 अक्टूबर, 2012

का.आ. 3185.—केन्द्रीय सरकार को यह प्रतीत होता है कि इससे उपाबद्ध अनुसूची में उल्लिखित परिक्षेत्र की भूमि में से कोयला अभिप्राप्य किए जाने की संभावना है;

और उक्त अनुसूची में वर्णित क्षेत्र के अंतर्विष्ट ब्यौरे रेखांक संख्या सी-1(ई) III/जेजेजेआर/876 - 0512, तारीख 8 मई, 2012 का निरीक्षण, वेस्टर्न कोलफील्ड्स लिमिटेड, (राजस्व विभाग) कोल इस्टेट, सिविल लाईन्स, नागपुर-440 001 (महाराष्ट्र) के कार्यालय में या मुख्य महाप्रबंधक (खोज प्रभाग), केन्द्रीय खान योजना एवं डिजाइन संस्थान, गोंडवाना पॅलेस, कांके रोड, रांची- 834 001 के कार्यालय में या कोयला नियंत्रक, 1, काउंसिल हाउस स्ट्रीट, कोलकाता- 700 001 के कार्यालय में या जिला कलेक्टर, चंद्रपुर (महाराष्ट्र) के कार्यालय में किया जा सकता है;

अतः, अब, केन्द्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 4 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उस भूमि में कोयले का पूर्वोक्षण करने के अपने आशय की सूचना देती है;

उक्त अनुसूची में उल्लेखित भूमि में हितबद्ध कोई व्यक्ति—

- (i) संपूर्ण भूमि या उसके किसी भाग या ऐसी भूमि में या उसके ऊपर किसी अधिकार के अर्जन पर आक्षेप कर सकेगा; या
- (ii) भूमि या ऐसी भूमि पर कोई अधिकार या भूमि के प्रतिकर के हित के लिए दावा कर सकेगा; या
- (iii) खनन पट्टा अर्जन करने के अधीन अधिकारों की पूर्वोक्षण अनुज्ञप्ति प्रभावहीन हो जाने और भूमि संबंधी सभी नक्शे चार्टी तथा अन्य दस्तावेजों का परिदान, अयस्कों या अन्य खनिजों के नमूनों का भूमि से संग्रहण और उनका सम्यक विश्लेषण करने के लिए तथा उक्त अधिनियम की धारा 13 की उप-धारा (7) में निर्दिष्ट कोई अन्य सुसंगत अभिलेखों या सामग्रियों की तैयारी के लिए प्रतिकर की मांग,

इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से नब्बे दिन के भीतर, क्षेत्रीय महाप्रबंधक, वेस्टर्न कोलफील्ड्स लिमिटेड, बल्लारपुर क्षेत्र, पोस्ट सास्ती, तहसील राजुरा, जिला चंद्रपुर- 442 701 (महाराष्ट्र) या महाप्रबंधक, वेस्टर्न कोलफील्ड्स लिमिटेड, भूमि और राजस्व विभाग, कोल इस्टेट, सिविल लाईन्स, नागपुर-440 001 (महाराष्ट्र) को भेज सकेगा।

अनुसूची

साखरी-ईरावती (पौनी-III) ओपनकास्ट माईन

बल्लारपुर क्षेत्र

जिला — चंद्रपुर (महाराष्ट्र)

[रेखांक संख्या सी-1(ई) III/जेजेजेआर/876-0512, तारीख 8 मई, 2012]

सभी अधिकार:

क्रम सं.	ग्राम का नाम	पटवारी सर्किल संख्या	तहसील	जिला	क्षेत्रफल (हेक्टर में)			कुल	टिप्पणियां
					अभिकृति	सरकारी	वन		
1.	साखरी	2	राजुरा	चंद्रपुर	666.29	61.43	12.07	739.39	भाग
2.	वरोड़ा	2	राजुरा	चंद्रपुर	36.95	1.80	0.00	38.75	भाग
3.	चिंचोली (खा)	3	राजुरा	चंद्रपुर	42.16	0.00	0.00	42.16	भाग
कुल:					745.40	63.23	12.07	820.70	-

कुल क्षेत्र: — 820.70 हेक्टर (लगभग)

या 2027.95 एकड़ (लगभग)

सीमा वर्णन:—

- क-ख: रेखा, ग्राम वरोड़ा में बिन्दु 'क' से आरंभ होती है फिर ग्राम वरोड़ा एवं ग्राम साखरी की सम्मिलित ग्राम सीमा को पार करती है फिर ग्राम साखरी से होकर गुजरती है और बिन्दु 'ख' पर मिलती है।
- ख-ग-घ: रेखा, ग्राम साखरी से होकर मालगुजारी तालाब और पौनी ओसीपी-II की अर्जित भूमि से लगकर गुजरती है फिर बिन्दु 'ग' के पास से गुजरती है और पौनी ओ. सी.पी. की अर्जित भूमि के पास 'घ' पर मिलती है।
- घ-ङ: रेखा, ग्राम साखरी से होकर गुजरती है फिर ग्राम साखरी एवं ग्राम चिंचोली (खुर्द) की सम्मिलित ग्राम सीमा से लगकर गुजरती है और बिन्दु 'ङ' पर मिलती है।
- ङ-च-छ: रेखा ग्राम चिंचोली (खुर्द) से होकर गुजरती है फिर रेखा बिन्दु 'च' के पास से गुजरती है फिर रेखा ग्राम हीरापुर एवं ग्राम साखरी की सम्मिलित ग्राम सीमा से लगकर गुजरती है और बिन्दु 'छ' पर मिलती है।
- छ-ज-क: रेखा ग्राम साखरी से होकर गुजरती है फिर रेखा ग्राम साखरी एवं ग्राम वरोड़ा की सम्मिलित ग्राम सीमा से लगकर गुजरती है फिर रेखा ग्राम वरोड़ा से होकर गुजरती है और बिन्दु 'ज' के पास से गुजरती है और आरंभिक बिन्दु 'क' पर मिलती है।

[फा. सं. 43015/11/2012-पीआरआईडब्ल्यू-I]

ए. के. दास, अवर सचिव

New Delhi, the 16th October, 2012

S.O. 3185.—Whereas, it appears to the Central Government that Coal is likely to be obtained from the lands in the locality desired in the Schedule annexed hereto;

And whereas, the plan bearing number C-1(E)III/JJR/876—0512, dated the 8th May, 2012 containing the

details of the areas described in the said Schedule can be inspected at the office of the Western Coalfields limited (Revenue Department), Coal Estate, Civil Lines, Nagpur-440 001 (Maharashtra) or at the office of the Chief General Manager (Exploration Division), Central Mine Planning and Design Institute, Gondwana Palace, Kanke Road, Ranchi-834 001 or at the office of the Coal Controller, 1, Council House Street, Kolkata-700001 or at the office of the District Collector, Chandrapur (Maharashtra);

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957), (hereinafter referred to as the said Act), the Central Government hereby gives notice of its intention to prospect for coal from lands described in the said Schedule;

Any person interested in the land described in the said Schedule may—

(i) object to the acquisition of the whole or any part of the land, or of any rights in or over such land; or

(ii) claim an interest in compensation if the land or any rights in or over such land; or

(iii) seek compensation for prospecting licences ceasing to have effect, rights under mining leases being acquired, and deliver all maps, charts and other documents relating to the land, collection from the land of cores or other mineral samples and due analysis thereof and the preparation of any other relevant record or materials referred to in sub-section (7) of Section 13 of the said Act,

to the Office of the Area General Manager, Western Coalfields Limited, Ballarpur Area, Post Sasti, Tahsil Rajura, District Chandrapur (Maharashtra)-442 701 or General Manager, Western Coalfields Limited, Land and Revenue Department, Coal Estate, Civil Lines, Nagpur-440 001 (Maharashtra) within ninety days from the date of publication of this notification in the Official Gazette.

SCHEDULE

SAKHARI-IRAWATI (PAUNI-III) OPENCAST MINE

BALLARPUR AREA

DISTRICT CHANDRAPUR (MAHARASHTRA)

[Plan bearing number C-1(E)III/JJR/876-0512, dated the 8th May, 2012]

All Rights:

Sl. No.	Name of Village	Patwari Circle number	Tahsil	District	Area (In hectares)			Total	Remarks
					Tenancy	Govt.	Forest		
1.	Sakhari	2	Rajura	Chandrapur	666.29	61.43	12.07	739.79	Part
2.	Waroda	2	Rajura	Chandrapur	36.95	1.80	0.00	38.75	Part
3.	Chincholi (KH.)	3	Rajura	Chandrapur	42.16	0.00	0.00	42.16	Part
Total :					745.40	63.23	12.07	820.70	—

**Total area: 820.70 hectares (approximately)
or 2027.95 acres (approximately)**

Boundary description:

- A-B: Line starts from Point 'A' in village Waroda than line crosses to the common village boundary of villages Waroda and Sakhari, then line passes through village Sakhari and meets at Point 'B'.
- B-C-D: Line passes through village Sakhari along the Malgujari Lake and acquired land boundary of Pauni-II OCP then passes nearby Point 'C' and meets at Point 'D' near the acquired land of Pauni Opencast Mine.
- D-E: Line passes through village Sakhari, then passes along the common village boundary of villages Sakhari and Chincholi (KH.) and meets at Point 'E'.
- E-F-G: Line passes through village Chincholi (KH.) then line passes nearby Point 'F', then line passes along the common village boundary of villages Sakhari and Hirapur and meets at Point 'G'.
- G-H-A: Line passes through village Sakhari then the line passes along the common village boundary of villages Sakhari and Waroda, then line passes through village Waroda and passes nearby Point 'H' and meets at starting Point 'A'.

[F.No. 43015/11/2012-PRIW-I]

A.K. DAS, Under Secy.

नई दिल्ली, 16 अक्टूबर, 2012

का.आ. 3186.—केन्द्रीय सरकार ने कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें, इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 7 की उप-धारा (1) के अधीन जारी की गई भारत सरकार के कोयला मंत्रालय की अधिसूचना संख्यांक का.आ. 1697, तारीख 20 जून 2011, जो भारत के राजपत्र, भाग II, खण्ड 3, उपखण्ड (ii), तारीख 25 जून, 2011 में प्रकाशित की गई थी, द्वारा उस अधिसूचना से संलग्न अनुसूची में यथा वर्णित 58.70 हेक्टर (लगभग) या 145.05 एकड़ (लगभग) माप वाली भूमि में या उस पर के खनन अधिकार के अर्जन करने के अपने आशय की सूचना दी थी;

और सक्षम प्राधिकारी ने उक्त अधिनियम की धारा 8 के अनुसरण में केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है;

और केन्द्रीय सरकार का, पूर्वोक्त रिपोर्ट पर विचार करने के पश्चात् और महाराष्ट्र सरकार से परामर्श करने के पश्चात् यह समाधान हो गया है, कि इससे संलग्न अनुसूची में वर्णित 58.70 हेक्टर (लगभग) या 145.05 एकड़ (लगभग) माप वाली भूमि में खनिजों के खनन, खदान, बोर करने, उनकी रिहाई करने, उन्हें प्राप्त करने हेतु तलाश करने और उन्हें ले जाने के अधिकारों का अर्जन किया जाना चाहिए।

अतः, अब केन्द्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) की धारा 9 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह घोषणा करती है कि अनुसूची में वर्णित 58.70 हेक्टर (लगभग) या 145.05 एकड़ (लगभग) माप वाली भूमि में खनिजों के खनन, खदान, बोर करने, उनकी खुदाई करने, उन्हें प्राप्त करने हेतु तलाश करने और उन्हें ले जाने के अधिकारों का अर्जन किया जाता है।

इस अधिसूचना के अंतर्गत आने वाले क्षेत्र के रेखांक संख्या सी-1(ई)/III/एफआर/880-0712, तारीख 11 जुलाई, 2012 का निरीक्षण कलेक्टर, नागपुर (महाराष्ट्र) के कार्यालय में या कोयला नियंत्रक, 1, काउंसिल हाउस स्ट्रीट, कोलकाता (पिन-700 001) के कार्यालय में या वेस्टर्न कोलफील्ड्स लिमिटेड (राजस्व विभाग), कोल एस्टेट, सिविल लाइन्स, नागपुर-440 001 (महाराष्ट्र) के कार्यालय में किया जा सकता है।

अनुसूची

वाघोड़ा अंडरग्राउंड माईन

नागपुर क्षेत्र

जिला - नागपुर (महाराष्ट्र)

[रेखांक संख्या सी-1(ई)III/एफआर/880-0712,

तारीख 11 जुलाई, 2012]

क्र. सं.	ग्राम का नाम	पटवारी सर्किल संख्या	तहसील	जिला	क्षेत्रफल हेक्टर में	टिप्पणियां
1.	सावनेर	34	सावनेर	नागपुर	58.70	भाग

कुल क्षेत्र:- 58.70 हेक्टर (लगभग)

या 145.05 एकड़ (लगभग)

ग्राम सावनेर में अर्जित किए गए प्लॉट संख्यांक:

245 भाग, 246 भाग, 248, 249, 250 भाग, 252 भाग, 253 भाग, 266 भाग, 661 भाग, 662, 663, 664, 665 भाग, 666 भाग, 667 भाग, 668 भाग, 669 भाग, 670 भाग, 672 भाग, 673 भाग, 678, 677 भाग, 679 भाग, 681, 682, 683, 684, 685 भाग, 686, 687 भाग, 689, 690, 691, 692, 693, 694, 695, 696 भाग, 697, 698, 699, 700, 701 भाग, 702 भाग, 703, 704 भाग, 715 भाग, 1155, 1156, 1157, 1158, सड़क भाग, कोलार नदी भाग, शासकीय भूमि भाग।

सीमा वर्णन:

क-ख: रेखा बिन्दु 'क' से आरंभ होती है और ग्राम सावनेर के प्लॉट संख्यांक 679, 678, 673, 672, 670, 669, 668, 667, 666, 665, 664, 663, की बाह्य सीमा के साथ जाती है और बिन्दु 'ख' पर मिलती है।

ख-ग: रेखा प्लॉट संख्या 662 की बाह्य सीमा के साथ जाती हुई प्लॉट संख्यांक 661, 687, 685, 689, 266,

253, 252, 250, से होकर गुजरती है और प्लॉट संख्यांक 249, 248 की बाह्य सीमा के साथ जाती हुई प्लॉट संख्या 246, शासकीय भूमि तथा प्लॉट संख्या 245 से होकर गुजरती है और बिन्दु 'ग' पर मिलती है।

ग-घ: रेखा प्लॉट संख्या 245 तथा शासकीय भूमि से होकर गुजरती हुई कोलार नदी को पार करती है, और प्लॉट संख्या 696 से होकर गुजरती हुई सड़क पार करती है और प्लॉट संख्यांक 704, 702, 701, 715 से होकर गुजरती है और बिन्दु 'घ' पर मिलती है।

घ-ङ: रेखा प्लॉट संख्या 715 की बाह्य सीमा के साथ जाती है और बिन्दु 'ङ' पर मिलती है।

ङ-च: रेखा सड़क पार करती है और प्लॉट संख्यांक 698, 681 की बाह्य सीमा के साथ गुजरती हुई नदी को पार करती है और बिन्दु 'च' पर मिलती है।

च-छ: रेखा कोलार नदी के उत्तरी किनारे के साथ जाती हुई प्लॉट संख्या 684 की बाह्य सीमा के साथ गुजरती है और बिन्दु 'छ' पर मिलती है।

छ-क: रेखा ग्राम सावनेर के प्लॉट संख्यांक 663, 664 की बाह्य सीमा के साथ जाती हुई प्लॉट संख्यांक 665, 666, 667, 668, 669, 670, 672, 673, 677, 679 से होकर गुजरती है और आरंभिक बिन्दु 'क' पर मिलती है।

[फा.सं. 43015/36/2009-पीआरआईडब्ल्यू-I]
ए.के. दास, अवर सचिव।

New Delhi, the 16th October, 2012

S.O. 3186.—Whereas by the notification of the Government of India in the Ministry of Coal *vide* number S.O. 1697, dated the 20th June, 2011, issued under sub-section (1) of Section 7 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act), and published in part II, Section 3, sub-section (ii) of the Gazette of India, dated the 25th June, 2011, the Central Government gave notice of its intention to acquire the lands measuring 58.70 hectares (approximately) or 145.05 acres (approximately) and mining rights in and or as such lands as described in the Schedule appended to that notification;

And whereas the competent authority in pursuance of Section 8 of the said Act, has made his report to the Central Government;

And whereas, the Central Government after considering the report aforesaid and after consulting the Government of Maharashtra is satisfied that the rights to mine, quarry, bore, dig and search for win work and carry

away minerals in the lands measuring 58.70 hectares (approximately) or 145.05 acres (approximately) as described in Schedule appended hereto, should be acquired.

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 9 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957), the Central Government hereby declares that the rights to mine, quarry, bore, dig and search for win, work and carry away minerals in the lands measuring 58.70 hectares (approximately) or 145.05 acres (approximately) described in Schedule, are hereby acquired.

The plan bearing number C-1(E) III/FR/880-0712, dated the 11th July, 2012 of the area covered by this notification, may be inspected in the office of the Collector, Nagpur (Maharashtra) or in the office of the Coal Controller, 1, Council House Street, Kolkata (Pin 700 001) or in the office of the Western Coalfields Limited (Revenue Department), Coal, Estate, Civil Lines, Nagpur-440 001 (Maharashtra).

SCHEDULE

WAGHODA UNDERGROUND MINE

NAGPUR AREA

DISTRICT - NAGPUR (MAHARASHTRA)

[Plan bearing number C-1(E) III/FR/880-0712,
dated the 11th July, 2012]

Sl. No.	Name of village	Patwari circle number	Tahsil	District	Area in hectares	Remarks
1.	Saoner	34	Saoner	Nagpur	58.70	Part

**Total: 58.70 hectares (approximately)
or 145.05 acres (approximately)**

Plot numbers acquired in village Saoner:

245 Part, 246 Part, 248, 249, 250 Part, 252 Part, 253 Part, 266 Part, 661 Part, 662, 663, 664, 665 Part, 666 Part, 667 Part, 668 Part, 669 Part, 670 Part, 672 Part, 673 Part, 678, 677 Part, 679 Part, 681, 682, 683, 684, 685 Part, 686, 687 Part, 689, 690, 691, 692, 693, 694, 695, 696 Part, 697, 698, 699, 700, 701 Part, 702 Part, 703, 704 Part, 715 Part, 1155, 1156, 1157, 1158, Road Part, Kolar River Part, Government land Part.

Boundary description:

A—B: Line starts from point 'A' and passes along the outer boundary of plot numbers 679, 678, 673, 672, 670, 669, 668, 667, 666, 665, 664, 663 of village Saoner and meets at point 'B'.

B—C: Line passes along the outer boundary of plot number 662 then passes through plot numbers 661, 687, 685, 689, 266, 253, 252, 250, passes along the outer boundary of

plot numbers 249, 248, then, proceeds through plot number 246, Government land, plot number 245 and meets at point 'C'.

C—D: Line passes through plot number 245, Government land, then crosses the river Kolar, then passes through plot number 696, then crosses the road then passes through plot numbers 704, 702, 701, 715 and meets at point 'D'.

D—E: Line passes along the outer boundary of plot number 715 and meets at point 'E'.

E—F: Line crosses the road, then passes along the outer boundary of plot numbers 698, 681, then crosses the river and meets at point 'F'.

F—G: Line passes along the northern bank of Kolar river, then proceeds along the outer boundary of plot number 684 and meets at point 'G'.

G—A: Line passes along the outer boundary of plot numbers 663, 664, then passes through plot numbers 665, 666, 667, 668, 669, 670, 672, 673, 677, 679 of village Saoner and meets at starting point 'A'.

[F.No. 43015/36/2009-PRIW-I]

A.K. DAS, Under Secy.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 11 अक्टूबर, 2012

का.आ. 3187.—केन्द्रीय सरकार पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 2 के खण्ड (क) के अनुसरण में नीचे दी गई अनुसूची के स्तम्भ (1) में उल्लिखित व्यक्ति को उक्त अनुसूची के स्तम्भ (2) में की तत्स्थानी प्रविष्टि में उल्लिखित क्षेत्र की बाबत, उक्त अधिनियम के अधीन सक्षम प्राधिकारी के कृत्यों का पालन करने के लिए प्राधिकृत करती है, अर्थात्:—

अनुसूची

प्राधिकारी का नाम और पता	क्षेत्र
श्री एच.एस. रावत, डिप्टी कलेक्टर (रिटायर्ड) मल्लावरम - भोपाल - भिलवाड़ा - विजयपुर नेचुरल गैस पाइपलाइन नेटवर्क जीएसपीएल इंडिया ट्रांसको लिमिटेड घर नं. 468, सेक्टर-ए, शाहपुरा, भोपाल - 462 016, मध्य प्रदेश	मध्य प्रदेश राज्य

2. यह अधिसूचना जारी होने की तारीख से लागू होगी।

[फा. सं. एल-14014/39/2011-जी.पी]

ए. गोस्वामी, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 11th October, 2012

S.O. 3187.—In pursuance of clause (a) of Section 2 of the Petroleum and Minerals Pipelines (Acquisition of Right of user in Land) Act, 1962 (50 of 1962), the Central Government hereby Authorizes the person mentioned in column (1) of the Schedule given below to perform the functions of the Competent Authority under the said Act, in respect of the areas mentioned in column (2) of the said Schedule namely:—

SCHEDULE

Name and Address of the Authority	Area of Jurisdiction
Shri H.S. Rawat, Deputy Collector (Retd.) Mallavarm - Bhopal - Bhilwara - Vijaipur Natural Gas Pipeline Network GSPL INDIA TRANSCO Limited (GTL) 468, Sector-A, Shahpura Bhopal - 462 016, Madhya Pradesh	For the State of Madhya Pradesh

2. This notification will be effective from the date of its issue.

[F.No. L-14014/39/2011-GP]

A. GOSWAMI, Under Secy.

नई दिल्ली, 11 अक्टूबर, 2012

का.आ. 3188.— केन्द्रीय सरकार पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 2 के खण्ड (क) के अनुसरण में नीचे दी गई अनुसूची के स्तम्भ (1) में उल्लिखित व्यक्ति को उक्त अनुसूची के स्तम्भ (2) में की तत्स्थानी प्रविष्टि में उल्लिखित क्षेत्र के बाबत उक्त अधिनियम के अधीन सक्षम प्राधिकारी के कृत्यों का पालन करने के लिए प्राधिकृत करती है अर्थात्:—

अनुसूची

क्रम.स.	प्राधिकारी का नाम और पता	आंध्र प्रदेश न्यायिक क्षेत्र के लिए
	श्री चि. तेजो भास्कर राव, तहसीलदार मल्लावरम-भोपाल-भिलवाड़ा विजयपुर नेचुरल गैस पाइपलाइन परियोजना,	

क्रम.स.	प्राधिकारी का नाम और पता	आंध्र प्रदेश न्यायिक क्षेत्र के लिए
1.	जीएसपीएल इंडिया ट्रांसको लिमिटेड डोर नं. 82-18-11, खान ले-आउट, गेल ऑफिस के सामने, राजमंड्री स्पोर्ट्स क्लब के समीप, ए.वी. अप्पाराव रोड, राजमंड्री-533103 जिला: ईस्ट गोदावरी (आंध्र प्रदेश)	ईस्ट गोदावरी
	श्री चि. एच.वी.आर. शर्मा, तहसीलदार, मल्लावरम-भोपाल-भीलवाड़ा- विजयपुर नेचुरल गैस पाइपलाइन परियोजना,	
2.	जीएसपीएल इंडिया ट्रांसको लिमिटेड, 24-4-264/1, तीसरी मंजिल, रामाकिशना कॉलोनी, फारेस्ट ऑफिस के समीप, हानमकोन्डा, जिला: वारंगल (आंध्र प्रदेश)	खम्मम एवं वारंगल
	श्री मो. अकबर नवाज, तहसीलदार, मल्लावरम-भोपाल-भीलवाड़ा- विजयपुर नेचुरल गैस पाइपलाइन परियोजना	
3.	जीएसपीएल इंडिया ट्रांसको लिमिटेड फ्लैट नं० 309, तीसरी मंजिल, श्री कैलासा रेसीडेन्सी अपोलो रीच हस्पताल के सामने, रेलवे स्टेशन रोड, जिला: करीमनगर (आंध्र प्रदेश)	करीमनगर एवं आदिलाबाद
	श्री एम. रामा कृष्णा, तहसीलदार, मल्लावरम-भोपाल-भीलवाड़ा- विजयपुर नेचुरल गैस पाइपलाइन परियोजना	
4.	जीएसपीएल इंडिया ट्रांसको लिमिटेड डोर नं० 23B-4-14, सुबम्मादेवी स्कूल लेन, रामाचन्द्राराव पेठा, एलूरु, जिला: वेस्ट गोदावरी (आंध्र प्रदेश)	वेस्ट गोदावरी

यह अधिसूचना जारी होने की तारीख से लागू होगी।

[फा.सं.एल-14014/39/2012-जी.पी.]

ए.गोस्वामी, अवर सचिव

New Delhi, the 11th October, 2012

S.O. 3188.—In pursuance of clause (a) of Section 2 of the Petroleum Minerals Pipelines (Acquisition and Right of use in Land) Act, 1962 (50 of 1962), the Central Government hereby Authorizes the person mentioned in column (2) of the Schedule given below to perform the functions of Competent Authority for GITL's Mallavaram-Bhopal-Bhilwara-Vijaipur pipeline under the said Act, in respect of the areas mentioned in column (3) of the said Schedule, namely:—

SCHEDULE

Sl.No.	Name and Address of the Authority	Area of Jurisdiction in the state of Andhra Pradesh
	Sri Ch. Tejo Bhaskar Rao, Tehsildar Mallavaram-Bhopal-Bhilwara- Vijaipur Natural Gas Pipeline Project,	
1.	GSPL India Transco Limited Door No. 82-18-11, Khan Layout Opp. GAIL Office, Near Rajahmundry Sports Club, A.V. Apparao Road, Rajahmundry-533103 Distt.-East Godavari (AP)	For the District of East Godavari
	Sri Ch. H.V.R. Sharma, Tehsildar Mallavaram-Bhopal-Bhilwara- Vijaipur Natural Gas Pipeline Project	
2.	GSPL India Transco Limited 24-4-264/1, 3rd Floor, Ramakrishna Colony, Near Forest Office, Hanamkonda, Distt.-Warangal (AP)	For the District of Khammam & Warangal
	Sri Md. Akbar Nawaz, Tehsildar Mallavaram-Bhopal-Bhilwara- Vijaipur Natural Gas Pipeline Project	
3.	GSPL India Transco Limited Flat No. 309, 3rd Floor, Sri Kailasa Residency, Opp. Apollo Reach Hospital, Railway Station Road, Subhash Nagar, Village Teegalagutapally, Distt. Karimnagar (AP)	For the District of Karimnagar & Adilabad
	Sri M. Rama Krishna, Tehsildar Mallavaram-Bhopal-Bhilwara- Vijaipur Natural Gas Pipeline Project	

Sl.No.	Name and Address of the Authority	Area of Jurisdiction in the state of Andhra Pradesh
--------	-----------------------------------	---

4.	GSPL India Transco Limited Door No. 23B-4-14, Subbammadevi School Lane Ramachandrarao Pet, Eluru, Distt. West Godavari, Pin-534002 (AP)	For the District of West Godavari
----	--	-----------------------------------

2. This notification will be effective from the date of its issue.

[F.No.L-14014/39/2012-GP]

A. GOSWAMI, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 20 सितम्बर, 2012

का.आ.3189.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार जनरल मैनेजर, सिक्योरिटी पेपर मिल, होशंगाबाद के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या सी. जी.आई.टी./एल.सी./आर./64/04) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-9-2012 को प्राप्त हुआ था।

[सं. एल.-16011/04/2002-आई.आर.(डी.यू.)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 20th September, 2012

S.O. 3189.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/64/04) of the Central Government Industrial Tribunal- cum-Labour Court, Jabalpur as shown in the Annexe, in the Industrial dispute between the General Manager, Security Paper Mill, Hoshangabad and their workman, which was received by the Central Government on 20-09-2012.

[No.L-16011/04/2002-IR(DU)]

SURENDRA KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/64/04

Presiding officer: SHRI MOHD. SHAKIR HASAN

The General Secretary,
SPM Employees Union,
Type II/63, Phase II,
SPM, Hoshangabad

...Workman

Versus

The General Manager
Security Paper Mill,
Hoshangabad

...Management

AWARD

Passed on this 16th day of August 2012

1. The Government of India, Ministry of Labour vide its Notification No. L-16011/4/2002-IR(DU) dated 20-5-2004 has referred the following dispute for adjudication by this tribunal:—

“Whether the claim of the General Secretary, SPM Employees Union, Hoshangabad for implementation of the report of National Productivity Council (NPC) recommending higher pay scales to the technical employees of Security Paper Mill, Hoshangabad is legal and justified? If so, to what relief the concerned workman are entitled to and from which date?”

2. The case of the Union in short is that the Security Paper Mill, Hoshangabad (in short SPM) was modernized in early 1980 to increase the production capacity. A job study of the SPM was done by an independent agency known as IBCON Ltd., Mumbai but the SPM Employees Union did not agree to be a signatory for implementation of IBCON Ltd. report. Thereafter Govt. of India, Ministry of Finance appointed National Productivity Council (in short NPC) to conduct a scientific study of manpower assessment, job evaluation including job specifications, pay scales, incentive and improvisation of maintenance practice of SPM. The recommendations of the NPC were implemented w.e.f. 21-10-1992 through a tripartite agreement whereby some of the existing posts were upgraded, some posts had been redesignated and some posts had been created. The NPC vide letter No. 5119 dated 15-11-88 recommended that the Technical employees should be appointed as semi-skilled Trademan. The Union gave representations to the management to implement the said recommendation but no reply was given. It is stated that there was anomalies in the pay scales of technical and non-technical employees of the SPM which was necessary

to be removed in view of recommendation and manpower assessment and job evaluation. The NPC in the year 1999 submitted a report that the pay scale of technical employees should be higher than that of non-technical employees. This report was submitted back in the year 1992. The Union raised the dispute when the management did not implement the report. It is submitted that the claim of Union for implementation of the report of NPC recommending higher pay scales to technical employees of SPM, Hoshangabad be declared as legal and justified.

3. The management appeared and filed Written Statement. The case of the management, inter alia, is that admittedly SPM was modernized in early 1980 to increase the production capacity and IBCON Ltd. Mumbai was entrusted for job study of the mill. His report was not acceptable to the SPM, Union and subsequently Govt. of India appointed NPC to submit his recommendation after scientific study for manpower assessment, job evaluation including job specifications and pay scales etc. The recommendations of the NPC was approved by the Govt. and was agreed by the SPM Union and were implemented w.e.f. 21-10-1992 through a tripartite agreement. It is denied that the NPC vide letter No. 5119 dated 15-11-1988 recommended that the technical staffs should be appointed as semi skilled tradesman rather it was a mere clarification from NPC regarding one of the points that in Engineering Sections basic qualification of fresh recruit should be ITI and NPC accepted the said suggestion but in such a case, the recruitment should be in the grade VII as "Mates" and not as Mazdoor in Grade VIII. However in recruitment rules, the basic qualification to the post of mazdoor is ITI. It is stated that there is no recommendation either from NPC or Pay Commission that technical employees should be given higher pay scale. It is stated that in absence of any specific recommendation by either NPC or Pay Commission, it is not possible to accede to the demand of the Union for higher pay scale to technical employees. It is denied that the Union started representing to the management way back in the year 1997 regarding the implementation of the recommendations of NPC. The pay scales recommended for technical employees were agreed by the recognized Union as per the tripartite agreement. It is submitted that the Union is not entitled to any relief.

4. On the basis of the pleadings of the parties, the following issues are framed for adjudication—

- I. Whether the claim of the Union for implementation of the report of NPC recommending higher pay scales to the Technical employees of SPM, Hoshangabad is legal and justified?
- II. To what relief the Union is entitled?

5. Issue No. I

On the basis of the pleadings of the parties, the following facts are admitted—

1. The SPM Hoshangabad was modernised in early 1980 to increase the productive capacity of the mill.
2. A job study of the SPM, Hoshangabad was done by an independent agency known as IBCON Ltd. Mumbai but the SPM Union did not agree to be signatory for implementation of IBCON Ltd. report.
3. Thereafter Govt. of India, Ministry of Finance appointed NPC to conduct a scientific study of manpower assessment, job evaluation including job specifications, pay scales, incentive and improvisation of maintenance practice of SPM.
4. The recommendations of the NPC were implemented w.e.f. 21-10-1992 through a tripartite agreement whereby some of the existing posts were upgraded, some posts had been re-designated and some posts had been created.

6. According to the Union, there are two classes of employees in SPM, Hoshangabad—on technical employees of engineering deptt. and another non-technical employees of control and process department. The entry point of Technical employee is the post of Mazdoor whereas the entry point of non-technical employee is Paper Boy. The educational and other qualification required at the entry point in both categories of employees are also different. The basis of the appointment for the post of mazdoor in technical category, is matric and I.I.T recognised by the Govt. whereas in non-technical as Paper Boy, the basis of the appointment is Class VIIIth Pass and two years experience of highly grade skilled worker in the Finishing house of a Paper mill/under the Govt./Govt. undertaking/reputed companies. It is stated that there is difference in pay scales of technical employees in higher grade in the cadre and the non-technical employees are getting higher scales in higher cadre. Moreover the period taken in promotion to non-technical employees is less than the technical employees. It is stated that the NPC had recommended that entry of technical employee in engineering Sections should be in the Grade VII as Mate and not as Mazdoor in Grade VIII. It is stated that work of the technical cadre is hazardous where as non-technical is not as such. It is also stated that NPC had recommended vide letter 5119 dated 15-11-88. On the other hand, the management has contended that there is no specific recommendation either by NPC or by Pay Commission to upgrade the entry point of technical employee in Engineering Section as Grade VII Mate instead of Mazdoor Grade VIII. It is stated that the NPC vide letter No. 5119 dated 15-11-1988 had clarified regarding one of the points that in Engineering Sections, basic qualification of fresh

recruits should be ITI but in such case the recruitment should be in the grade VII as Mates and not a Mazdoor in Grade VIII. It is stated that it was not a specific recommendation rather it was a suggestion given by the NPC. It is stated that there is no specific recommendation and there is no anomalies. It is also stated that the recommendation of NPC were implemented through a tripartite agreement and the SPM Union was party to it.

7. Now let us examine the evidence adduced by the parties. To prove the case, the Union has examined two witnesses. The Union witness Shri Santosh Gour is President of the Union. He is Machine Operator Grade IV in SPM, Hoshangabad.

He has supported the case of the Union. He has stated that the NPC vide letter No. 5119 dated 15-11-1988 had recommended that the Technical employees should be appointed as semi-skilled trademen. He has stated that the Union had requested the management to put effect on the

said recommendations of the NPC. He has admitted that there was tripartite settlement on 21-10-1992 with respect to the recommendations of the NPC and a writ bearing no. W.P. 5996 was also filed. He has further stated that later on a clarification of the NPC was also received and the management had accepted the same. His evidence shows that the NPC had recommended the case of the Technical employee by way of clarification and the same was accepted but it was not implemented by the management. Another Union witness Shri K.P. Agrawal is working as Fitter Grade VII in SPM Hoshangabad. He has also supported the case of the Union. He has also stated that the NPC had recommended vide letter 5119 dated 15-11-1988 that the Technical employees should be appointed as semi skilled Trademen. He has differentiated the Technical and non-technical employee of the SPM Hoshangabad appointed at the time of initial appointment and the pay scale in the higher grades are also less which are as under:—

	Qualification for initial recruitment	Grade on initial recruitment	Grade on 1st Promotion	Grade on IInd Promotion	Grade on IIIrd Promotion
Non- Technical Employees	8th passed	Rs. 2650-4000	Rs. 3200-4900	Rs. 4000-6000	Rs. 4500-7000
Technical Employees	I.T.I. + Matric	Rs. 2650-4000	Rs. 3050-4590	Rs. 3200-4900	Rs. 4000-6000

This clearly shows that in the initial appointment higher educational qualification and technical qualification are required to the technical employee whereas it is not necessary to the non-technical employee. This fact is not challenged by the management. This witness has further stated that there is discrimination between the technical employees in respect of required service period to achieve equivalent grades in promotion. This fact is also not denied by the management that the non-technical employee requires less period to achieve higher grade than the Technical employee. Thus it is clear that non-technical employees are getting promotion before the technical employee.

8. The Union has also filed documentary evidence in support of the case. These documents are admitted by the management. Exhibit W/1 is the copy of the letter No. 5119 dated 15-1-88 of the NPC. The said letter shows that clarification was sought on NPC report for implementation. In Item No. 10, the clarification was sought that in engineering sections, basic qualification of fresh recruits should be ITI which is as under—

In engineering sections In the interest of
Basic qualification of implementations, the suggestion
Fresh recruits should be is accepted but in such a case,
ITI. the recruitment should be in the
Grade VII as "Mate" and not as
Mazdoor in Grade VIII.

...ACCEPTED

In the said item, the NPC had clarified that in the interest of implementation, the suggestion is accepted but in such a case, the recruitment should be in the Grade VII as "Mate" and not as Mazdoor in Grade VIII. The clarification means the process of making clear. This shows that the NPC had clarified his recommendation made to the management. This shows that it was not a suggestion rather it was the recommendation of the NPC of his report that at the entry point in the technical cadre, fresh recruit should be Grade VII as "Mate". This document further shows that the management had accepted the clarification made by the NPC but the management contended that it was suggestion about the entry of fresh recruit in Engineering Section in the Grade VII as "Mate". This shows that if the qualification is fixed as ITI then the entry for fresh recruitment in engineering Section must be in Grade VII as "Mate" This shows that it was not a suggestion but a recommendation. This is clear that the action of the management is arbitrarily that only part of the clarification is implemented without pleading any sound reason.

9. Exhibit W/2 is the recommendation of NPC of non-technical employees of SPM, Hoshangabad. This is filed to show that the educational qualification of Paper Boy is Class VIIIth pass. This further shows that the promotion in this cadre is more quick than the technical cadre. It also shows that in higher grade the pay scale is also higher than the technical cadre in the same grade. Exhibit W/3 is the recommendation of Technical employees of SPM,

Hoshangabad. This is filed to show that the employee of this cadre is also appointed in the same scale and grade though such employee possesses higher qualification but is getting less pay on promotion in higher grade and also takes more time in promotion. Thus, the documentary evidence of the Union clearly shows that there is a recommendation of the NPC that if the qualification is fixed ITI, then the entry should be in grade VII as Mate and the same was accepted by the management but the management is not justified in accepting the educational qualification for entry for fresh recruitment in Engineering Section only. This clarification of NPC is deemed to be part of the report. The said recommendations appears to be not implemented by the management.

10. On the other hand the management has examined only oral evidence. The management witness Shri K.N. Mahapatra is Deputy Manager in SPM, Hoshangabad (MP). He has stated that the recommendations of the NPC, as approved by the Govt. and as agreed by the SPM Employees Union, were implemented w.e.f. 21-10-1992 through a tripartite agreement. The said tripartite agreement is not filed by the management. He has stated at Para 14 that a W.P.No. 5696/98 was filed before the Hon'ble High Court and that case is different but partly related to this case. The copy of the order dated 31-1-2006 passed in Writ Petition No. 5696/98 is filed. The said order clearly shows that the said tripartite settlement was declared illegal. The Hon'ble High court held in para-18 that—

“For another reason, the said settlement cannot be said to be a settlement in the eye of law because for arriving at a settlement, the condition precedent is that there should be a demand by the Union, a reply should be filed by the management, negotiation should take place and thereafter the settlement is to be signed by the employer and in the case of the workmen by an officer of the trade Union. In the case of a conciliation settlement, the conciliation officer is obliged to send a report to the Central Government together with the copy of the settlement signed by the parties to the dispute (in that regard the foot note of Form II prescribed under Rule 58 may be seen) in case of a mutual settlement, parties to the settlement shall jointly send a copy thereof to the Central Government, the Chief Labour Commissioner, Regional Labour Commissioner and Assistant Labour Commissioner. On going through Annexure A/1, the settlement, no where it is gathered that it was ever forwarded to either to Central Government or other officers as required under Rule 58. Learned senior counsel for the petitioner did not assail the award of the Tribunal on its merit. The entire endeavour which was put forth by him is in regard to the settlement dated 21-10-1992 (Annexure A/21) which I have already held hereinabove that it has no sanctity in the eye of law.”

It is clear that the tripartite settlement was held illegal and it shows that the management had accepted the recommendation of the report of NPC on his own accord and not on the tripartite settlement. This management witness has also admitted that the letter No. 5119 dated 15-11-98 was clarification and suggestion. The management witness has proved the same document which is marked as W/1. He has further supported the case of the Union that the educational qualification of the Mazdoor in Engineering Section must be matric and ITI and the qualification of Paper Boy is class VIIIth. He has further stated that he had not seen any report that the clarification report of the NPC was studied by the management. This shows that the management had simply accepted the point of qualification which was referred to the NPC and had not implemented the entire clarification of the NPC which was condition precedent to the educational qualification. When the management has accepted the basic qualification of entry in the Engineering Section, then it is to be in Grade VII as "Mate" and not in Grade VIII as Mazdoor. Thus this issue is decided in favour of the Union and against the management.

11. Issue No. II

On the basis of the discussion made above, it is clear that the claim of the Union is justified because the management has partly accepted the clarification of the recommendation *vide* Exhibit W/1 but the other part of the clarification that the recruitment should be in Grade VII as "Mate" was condition precedent to the entire clarification. The management is directed to implement the same w.e.f. 21-10-1992 after upgrading the post as grade VII "Mate" in Engineering Sections and pay the differences of pay and all other consequential benefits arising thereof. The reference is, accordingly, answered.

12. In the result the award is passed without any order to costs.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 20 सितम्बर, 2012

का.आ. 3190.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार आफोसर इन चार्ज, एअर अरमामेन्ट इन्स्पेक्शन विंग, चन्द्रापुर एण्ड अदर्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या सी.जी.आई.टी./एन.जी.पी/08/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-09-2012 को प्राप्त हुआ था।

[सं. एल-14011/09/2006-आईआर(डीयू)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 20th September, 2012

S.O. 3190.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/NGP/08/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between The Officer-in-Charge, Air Armament Inspection Wing, Chandrapur and others and their workman, which was received by the Central Government on 20-09-2012.

[No. L-14011/09/2006-IR(DU)]

SURENDRA KUMAR, Section Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER,

CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/08/2007

Date: 21-08-2012

Applicants

- : 1. Shri Dilip Manikrao Mohod,
R/o. Chandika Ward No. 3,
Opp. P.W.D. Quarters,
Bhadravati, Tah. Bhadravati,
Chandrapur (MS)-4420902.
2. Smt. Sulochana Wd/o
Manikrao Mohod, Aged-59
Years, Occupation: Housewife,
R/o. Chandika Ward No. 3,
Opp. P.W.D. Quarters,
Bhadravati, Teh. Bhadravati,
Chandrapur (MS)-4420902.

Versus

Respondents

- : 1. The Officer-in-charge,
Air Armament Inspection
Wing (DET), Post-Chanda
Ordnance Factory, Teh.
Bhadravati, Chandrapur
(MS). 442501.
2. The Commandant,
Air Armament Inspection
Wing, DGADQA
Ministry of Defence,
Khamaria, Jabalpur,
M.P. - 482005.
3. The Directorate General of
Aeronautical Quality
Assurance, Ministry of
Defence, H-Block,
New Delhi-110011.

AWARD

(Dated: 21st August, 2012)

In exercise of the powers conferred by clause (d) of

sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short) the Central Government has referred the industrial dispute between the employers, in relation to the management of Air Armament Inspection Wing (DET) and Shri Dilip Manikrao Mohod, the son of the deceased workmen, Manikrao Mohod, for adjudication, as per letter No. L-14011/9/2006-IR (DU) dated 12-01-2007, with the following schedule:—

“Whether the action of the management of Air Armament Inspection Wing (DET), Chandrapur, in not granting compassionate appointment to Shri Dilip Manikrao Mohod son of Late Manikrao Mohod, Ex-Chargeman, is legal & justified? If not, to what relief the applicant is entitled?”

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the applicant, Shri Dilip Mohod, filed the statement of claim on behalf of himself and his mother, Smt. Sulochana and the respondents filed their joint written statement.

The case of the applicant, Dilip as projected in the statement of claim is that his father, Late Manikrao Mohod was working in the Air Armament Inspection Wing, DGAQA, Ministry of Defence, Chanda as a Chargeman, Grade I and his father expired on 12-02-1999 in a road accident at Bhandak Naka and he (the applicant) was born on 07-05-1972 and he passed 12th Class in March, 1998 and he is a member of schedule caste and after the death of his father, his mother on 16-03-1999 applied for his compassionate appointment in accordance with the Government Scheme and he was in urgent need of compassionate appointment for bonafide reasons of having no source of income and livelihood and all his eighteen family members were dependent on his deceased father and due to the untimely death of his father, the entire family was in distress and as his elder brother, Vilas was working as a labourer on daily wages, his elder brother did not apply for compassionate appointment and from the letters dated 22-11-2001 and 08-09-2002 issued by the respondents No. 2 & 3 respectively, it was found that name of Vilas was inserted and subsequently the application was rejected on the ground that two sons of his deceased father are already in Govt./Private service and payment of substantial amount of terminal benefits to his family and such grounds were not true and such action of party no. 1 clearly speaks about their malafide intention and he filed an application for the post of semi skilled worker for the second time on 23-02-2001 and the respondent no. 1 called him for interview on 03-04-2001, for recruitment to the post of labourer on casual basis for a period not exceeding 89 days and he was appointed and worked on daily wages with party no. 1 for 89 days and also as Safai Karmachari on casual basis for three days in a week and he was engaged as a casual labour

for the periods from 23-12-2004 to 22-03-2005, 25-04-2005 to 24-05-2005, 25-05-2005 to 20-08-2005, 03-10-2005 to 30-12-2005, from 02-01-2006 to 28-01-2006, 01-02-2006 to 30-04-2006 and 01-05-2006 to 16-06-2006 by respondent No. 1 and thereafter, he was discontinued orally without any notice and since then, he is out of employment and his application for compassionate appointment was rejected by respondent no. 1 on the ground of having no vacancy for compassionate appointment vide letter dated 01-02-2002.

The further case of the applicant is that the respondent no. 2 issued the reply on 26-09-2002 to the applications made by him through his mother on 01-07-2002, 29-07-2002, 03-09-2002 and 14-09-2002, informing that, "son Vilas had already crossed the prescribed age limit for recruitment to the post of mazdoor/peon as per existing rules and if "son Dilip applies, he can be considered for recruitment to the post of group 'D' (Mazdoor/Peon) against our advertisement as and when vacancy occurs" and the said reply was very vague and evasive, in considering his case and his applications dated 27-11-2002, 30-01-2003 and 14-06-2003 were rejected by respondent no. 2, vide letters dated 02-12-2002 and 30-06-2003, stating there in that, "The applicant's case for appointment on compassionate ground could not be considered by their HQ-DGAQA, New Delhi, as 5% quota is reserved and this is already exhausted "and" the case of the applicant can be considered for direct recruitment for group 'D' post (Mazdoor/Peon) if he applies against our advertisement as and when vacancy occurs" respectively and though he continued persuasion for his appointment, he did not get any positive response and all his applications were rejected on the ground of imposition of ban by the Government for recruitment and on 03-02-2004, his mother submitted another application for compassionate appointment for him and also made several requests to provide him any type of appointment on compassionate ground and vide his letter dated 08-05-2005, he requested to regularize his appointment as casual labourer on daily wages on compassionate ground and though the daily wages was Rs. 136- Rs. 142 he was actually paid @ 95 per day and he claimed the difference in the payment, by letter dated 30-04-2006 and neither his claim for regularisation was considered nor any fresh appointment was provided to him on compassionate ground and the respondents made discrimination and appointed one Bablu Dhusia on compassionate ground and posted at AAIW, Khamaria and the respondents acted contrary to the rules and regulations and his engagement on daily wages for 89 days for different periods shows that though there were many vacancies at the relevant time, the respondent no. 1 deliberately denied fair opportunity for compassionate appointment to him with malafide intention and many persons were appointed illegally and arbitrarily by violating the procedure envisaged for compassionate appointment and the reasoning given by respondent no. 1

appear to be deceptive in absence of seniority list of applicants seeking for compassionate appointment not being maintained. The applicant has prayed to declare the action of the respondents in not giving him compassionate appointment as illegal and unjustified and for a direction to the respondents to provide him appointment on any suitable post with continuity of service benefits and all pecuniary benefits w.e.f. 16-06-2006 and to pay him daily wages at the rate of Rs. 136-Rs. 142 for the periods for which he had worked.

3. The respondents in their joint written statement have pleaded inter-alia that respondent no. 1 is an Air Armament Inspection Field unit and is functioning under respondent no. 2 and respondent no. 2 directly deals with appointment of non-selection post of non-industrial and industrial employees (group 'C' and 'D') with the approval of respondent no. 3 and cases of compassionate appointment are directly considered by respondent no. 3 and Manikrao Mohod, the deceased father of applicant no. 1, Dilip Kumar was working as a Charge-man, grade-I under respondent no. 1 and he died on 12-02-1999 in a road accident after duty hours and after the death of his father, the applicant Dilip Kumar applied for compassionate appointment and all cases of compassionate appointment including the case of the applicant were considered in the light of DOP & T OM no. 14014/6/94-Estt.I dated 09-10-1998, 14014/23/99-Estt.(D) dated 03-12-1999, 19(4)/824-99/1998 (D) (LAB) dated 09-03-2001 and 14014/19-2002-Estt.(D) dated 05-05-2003 by the respondent No. 3, and on consideration of all the relevant factors as specified in the government circulars mentioned above, such as more liabilities, more number of family members, unmarried/small daughters, less terminal benefits, sickness/ailment/treatment and number of earning members of the family, it was found that the applicant, Dilip Kumar could not be appointed and in case of the applicant, it was found that all four male members were major and three of them were already married and two of them were already in service (i.e. one in Army Service and the other in Private sector) and as such, the case of the applicant could not be recommended and the applicant was intimated about closure of his case for compassionate appointment vide letter dated 24-08-2006, but the applicant filed the statement of claim on 30-08-2007, after expiry of one year i.e. beyond the period of limitation of one year as prescribed in clause (a), sub-section 1 of Section 21 of the Limitation Act and as such, the application is liable to be dismissed on the point of limitation.

It is further pleaded by the respondents that in the application dated 16-03-1999 filed for compassionate appointment of the applicant Dilip Kumar, it was mentioned that deceased's three married sons were already living separately and there was no support from them, but in paragraph 2 and 3 of the statement of claim, the truth has been concealed and in the application dated 20-10-1999,

the applicant had narrated that two earning members of the deceased's family were living separately and in the earlier application, deceased's father was not shown as a dependent, but in the statement of claim, he has been shown as a dependent, which proves the malafide intention of the applicant and in 1982, the deceased father of the applicant had submitted his family particulars indicating his four sons, one daughter, his father and wife as dependents and later in 1993, he had revised his family particulars indicating his wife, three sons and father as dependents and as such, the claim of the applicant in the statement of claim that one daughter and four sons are dependents is false and the same has been done with malafide intention and the application is liable for dismissal on the ground of concealment of material evidence and engagement of the applicant as casual labourer on daily wages basis has no relevance with compassionate appointment and it is already held by the Hon'ble Apex Court that the extension of scheme regarding appointment on compassionate ground to all sorts of casual, adhoc employees cannot be justified on constitutional grounds and the applicant was paid wages as per the instructions contained in MOD ID No. 4(1)/85/D(Civil) dated 29-09-1988 and the claim of the applicant for payment of wages at Nerrick rates is not tenable and no injustice was caused to the applicant and the allegations made in the statement of claim are baseless and the applicant is not entitled to any relief.

4. Before delving into the merit of the matter, I think it necessary to mention here that the reference has been made for adjudication of the dispute as to whether the action of the respondents in not providing compassionate appointment to the applicant, Dilip Kumar is legal and justified. It is well settled by the Hon'ble Apex Court in a number of decisions that the Tribunal has no power or jurisdiction to travel beyond the schedule of reference and to decide any other issue raised by the parties. So, the issues of non-payment of wages by the respondents as per nerrick rates of Rs. 136 Rs. 142 per day or non regularisation of the service of casual labourer on daily wages raised by the applicant in the statement of claim cannot be considered and adjudicated.

5. To substantiate their respective claims, both the parties led oral evidence, besides placing reliance on documentary evidence. The applicant Dilip Kumar in his examination-in-chief, which is on affidavit has reiterated the facts mentioned in the statement of claim. However, in his cross-examination, the applicant has admitted that his wife Puja is working in the Ordnance Factory as a Machinist, but her appointment was subsequent to the filing of the petition for compassionate appointment and his two elder brothers' work as labourers and his younger brother is serving in the Military and his mother received Rs. 4,21,523 as terminal benefits and she is also getting Rs. 6500 as family pension and he is also working as a labourer and getting Rs. 80 per day and they were staying

in the quarters allotted to his wife by the Ministry of Defence.

6. One Kamalakanta R. Mulka, a Nodal Officer has been examined as a witness on behalf of the respondents. His examination-in-chief is also on affidavit. This witness has also reiterated the facts mentioned in the written statement. In his cross-examination, this witness has admitted about the death of the father of the applicant on 12-02-1999 in a road accident while in service and the applicant applying for compassionate appointment and engagement of the applicant on daily wages for sometime and that Bablu Dusia was given compassionate appointment on 27-04-2006.

7. At the time of argument, it was submitted by the learned advocate for the applicant that after the death of his father, the applicant had submitted application for compassionate appointment and the case of the applicant was not properly considered and his application was rejected without due consideration of the principles, guidelines and policy for compassionate appointment and as the reference is made by the Government of India *vide* order dated 12-01-2007, the question of limitation is misconceived and without any merit and the applicant, Dilip Kumar is entitled for compassionate appointment.

8. On the other hand, it was submitted by the learned advocate for the respondents that the case of the applicant for compassionate appointment was considered alongwith all other cases of such appointment by the competent authority as per law and rules and as the case of the applicant was found not to be fit for appointment on compassionate ground, his case was rejected and in the year 1999, no appointment was given on compassionate ground and compassionate appointment is given to wife, son or daughter of a deceased employee, who are in indigent condition and who are in need of immediate assistance in the event of there being no other earning member in the family to supplement the loss of income from the bread winner to relieve the economic distress of the members of the family and in the case of the applicant, the applicant and his three brothers were already major and two of the brothers of the applicant were already earning and one of them was in the Army service and another in private sector and at the time of consideration of the cases of compassionate appointment, several factors, such as limitation of 5% of vacancies falling under direct recruitment, more liabilities, more number of family members, unmarried/minor daughters, less terminal benefits, sickness/ailment/treatment and number of earning members in the family are to be taken into consideration by the competent authority and it is very clear from the Government Policy that after a lapse of three years, compassionate appointment cannot be granted and it is not a vested right which can be exercised at any time in future. It was further submitted that the family members of

the applicant received terminal benefits of Rs. 4,78,194 and the mother of the applicant is also receiving Rs. 6500 per month as family pension and wife of the applicant is also working as Machinist in Ordnance Factory, Ambazari and the applicant is not entitled to any relief.

9. At this juncture, I think it necessary to mention the settled principles as enunciated by the Hon'ble Apex Court in number of decisions regarding compassionate appointment. It is well settled by the Hon'ble Apex Court that,

"The whole object of granting compassionate appointment is to enable the family to tide the sudden crisis and to relieve the family of the deceased from financial destitution and to help to get over the emergency.

Offering compassionate appointment as a matter of course irrespective of the financial condition of the family of the deceased or medically retired government servant is legally impermissible.

Compassionate appointment cannot be granted after lapse of a reasonable period and it is not a vested right which can be exercised at any time in future."

With the touch stone of the settled principles enunciated by the Hon'ble Apex Court in regard to compassionate appointment, now the present case in hand is to be considered.

10. In this case, it is the admitted case of the parties that deceased Manikrao Mohod, the father of the applicant Dilipkumar who was working in the Air Armament Inspection Wing, Chandrapur Ordnance Factory, Chanda died on 12-02-1999 in a road accident and after the death of his father, application for compassionate appointment was filed for giving compassionate appointment to Dilip Kumar and after consideration of the application, the respondent no. 3 rejected the same on the ground that the case of the applicant was found not to be fit for compassionate appointment and there was no vacancy for such appointment as the quota of 5% reserved for such appointment was already exhausted and rejection of the application was duly intimated to the applicant. It is also not disputed that the applicant, Dilip Kumar was appointed for some periods as casual labourer on daily wages basis. There is also no dispute that the family of the applicant got a sum of Rs. 4,21,523 towards terminal benefits and wife of deceased Manikrao is getting Rs. 6500 per month as family pension and the applicant and his two elder brothers were working as labourers and the younger brother of the applicant is already in army service. Such facts have been admitted by the applicant in his evidence.

In view of such admitted facts, I think that there is no need to deal with the documents submitted by the applicant in support of the above stated facts.

The respondents have filed all the relevant documents regarding compassionate appointment including the applications submitted by the applicant for compassionate appointment and the assessment of comparative merit list which was made for consideration of all the compassionate appointment. The said documents have been admitted into evidence on admission from the side of the applicant and marked as Exts. M-I to M-XIII. Ext. M-XIII is the comparative merit list prepared for compassionate appointment. On perusal of Ext. M-XIII, it is found that the case of the applicant was duly considered along with the other cases of compassionate appointment as per rules and guidelines prescribed by the government for compassionate appointment and the case of the applicant was found not fit for such appointment. It is clear from the materials on record and the facts and circumstances of the case that the application for compassionate appointment of the applicant was rightly rejected by the respondent no. 3 and there is no illegality in refusing to give compassionate appointment to applicant, Dilip Kumar. Hence, it is ordered:—

ORDER

The action of the management of Air Armament Inspection Wing (DET), Chandrapur, in not granting compassionate appointment to Shri Dilip Manikrao Mohod, son of Late Manikrao Mohod, Ex-Chargeman, is legal and justified. The applicant is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली 20 सितम्बर, 2012

का.आ. 3191.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डाइरेक्टर, अमरीकन एमबेसी स्कूल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नई दिल्ली के पंचाट (संदर्भ संख्या 63/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-09-2012 को प्राप्त हुआ था।

[सं. एल-42012/86/2011-आई.आर.(डी.यू.)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 20th September, 2012

S.O. 3191.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 63/2012) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure, in the Industrial dispute between the Director, American Embassy School and their workman, which was received by the Central Government on 20-09-2012.

[No. L-42012/86/2011-IR(DU)]

SURENDRA KUMAR, Section Officer

ANNEXURE

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
NO. 1, KARKARDOOMA COURTS COMPLEX, DELHI
I.D. No. 63/2012**

Shri Sarva Singh
R/o 503, Secor 3,
Pocket-16, Dwarka,
New Delhi-110078.

.....Workman

Versus

The Director,
The American Embassy School,
Chandra Gupta Marg,
Chanakyapuri,
New Delhi-110021.

.....Management

AWARD

The American Embassy School (in short the School) employed Shri Sarva Singh as Laboratory Assistant, *vide* letter dated 19.08.1983. His services were confirmed as Assistant Technician (Laboratory) with effect from 22-02-1984, *vide* letter dated 06-02-1984. His services were dispensed with by the School on 30-06-2009, claiming that his performance was not upto the mark. Aggrieved by the act of the School, Shri Sarva Singh raised a demand for reinstatement in service. When his demand was not conceded to, he raised an industrial dispute before the Conciliation Officer. Since, the conciliation proceedings failed, appropriate Government referred the dispute to this Tribunal for adjudication, *vide* order No. L-42012/86/2011-IR (DU) dated 17-02-2012 with the following terms:

“Whether the action of the management of The American Embassy School, Chanakyapuri, New Delhi, in terminating the services of the workman, Shri Sarva Singh with effect from 01-07-2009 (who was appointed as ‘Laboratory Assistant’ with effect from 22-08-1983 and continued in the employment till 30-06-2009 after putting in 26 years of service) is legal and justified? What relief the workman is entitled to and from which date?”

2. Claim statement was filed by Shri Sarva Singh pleading therein that he was appointed as Laboratory Assistant by the School *vide* appointment letter dated 19-08-1983. He was working in the School to entire satisfaction of his superiors. He was to retire from service on attaining the age of 60 years. However, he was arbitrarily removed from service with effect from 01-07-09, without assigning any reason. He wrote a letter dated 27-12-2009 seeking reinstatement in service. The School rejected his request *vide* letter dated 12-01-2010, on vague grounds.

3. Claimant presents that he was an active member of the Workers Association and the School was bent upon to remove him from service on account of his participation in association activities. In order to pressurise him, his signatures were obtained on different papers, alleged to be papers for contract of his service. He was made to receive arrears of his terminal benefits, on the pretext that his case for reinstatement would be sent to the higher authorities in America. According to him, act of the School in removing him from service is contrary to the provisions of law. He claims reinstatement in service with continuity and full back wages.

4. Claim was demurred by the School pleading that the Central Government is not the appropriate Government to make reference to the dispute to this Tribunal. Industrial Disputes Act, 1947 (in short the Act) defines appropriate Government and as per the definition contained therein, Central Government is not the appropriate Government for making reference of the dispute for adjudication. Only appropriate Government can make reference of the dispute to the Tribunal, by using its powers contained in section 10 of the Act, pleads the School.

5. The School is an instrumentality of the Government of United States of America and operates in accordance with the understanding between the Government of India and Government of the United States of America, as mentioned in letter dated 28-06-1973, issued by the Ministry of External Affairs, Government of India, New Delhi. As per understanding, Ambassador of United States of America in India administers the School and as such it is not an industry within the meaning of the Act. Claimant was employed on yearly contractual basis. His contract of employment for the relevant period was from 01-07-2008 to 30-06-2009. His employment was for a fixed period and not renewed thereafter. Act of the School does not tantamount to retrenchment as defined by the Act. The School pleads that the claimant was grossly insubordinate, used abusive language and remained discourteous to the employees of the School. Even then the School has followed principles of natural justice when it decided not to renew his contract of employment. There is no case in favour of the claimant to seek reinstatement. His claim may be dismissed, pleads the School.

6. On pleading of the parties, following preliminary issues were settled:

- (i) Whether the Central Government is not the appropriate Government to make reference of the dispute to this Tribunal for adjudication?
- (ii) Whether this Tribunal lacks jurisdiction to entertain the dispute, since it has not been referred by the appropriate Government for adjudication?

7. Since issues referred above are legal, parties were not called upon to adduce any evidence.

8. Arguments were heard at the bar. Shri D.S. Patiyal, authorized representative, advanced arguments on behalf of the claimant. Shri Chander Shekhar, authorised representative, presented facts on behalf of the School. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the records. My feelings on the preliminary issues are as follows:

9. Clause (a) of Section 2 of the Act defines appropriate Government. It would be expedient to know the definition of phrase 'appropriate Government'. Consequently, definition of the phrase is extracted thus:

“2(a)” appropriate Government” means—

- (i) in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government or by a railway company or concerning any such controlled industry as may be specified in this behalf by the Central Government or in relation to an industrial dispute concerning a Dock Labour Board established under Section 5A of the Dock Workes (Regulation of Employment) Act, 1948 (9 of 1948), or the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956 (1 of 1956) or the Employees' State Insurance Corporation established under Section 3 of the Employees' State Insurance Act, 1948 (34 of 1948), or the Board of Trustees and the State Board of Trustees section 5A and section 5B, respectively, of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), or the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956), or the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956 (1 of 1956), or the Deposit Insurance and Credit Guarantee Corporation established under section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961), or the Central Warehousing Corporation established under Section 3 of the Warehousing Corporations Act, 1962 (58 of 1962), or the Unit Trust of India established under section 3 of Unit Trust of India Act, 1963 (52 of 1963), or the Food Corporation of India established under section 3, or a Board of Management established for two or more contiguous States under section 16, of the Food Corporations Act, 1964 (37 of 1964), or the Airports Authority of India constituted under section 3 of the Airports Authority of India Act, 1994 (55 of 1994), or a Regional Rural Bank established under section 3 of the Regional Rural Banks Act, 1976 (21 of 1976), or the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Corporation of India Limited, the National Housing Bank established under section 3 of the National Housing Bank Act, 1987 (53 of 1987)

or the Banking Service Commission Act 1975 or an air transport service, or a banking or an insurance company, a mine, an oil field, a Cantonment Board, or a major port, an company in which not less than fifty one percent of the paid up share capital is held by the Central Government, or any Corporation, not being a Corporation referred to in this clause, established by or under any law made by Parliament, or the Central public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the Central Government, the Central Government, and

- (ii) in relation to any other industrial dispute, the State public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the State Government, the State Government;

Provided that in case of a dispute between a contractor and the contract labour employed through the contractor in any industrial establishment where such dispute first arose, the appropriate Government shall be the Central Government or the State Government, as the case may be, which has control over such industrial establishment.

10. In relation to an industrial dispute, appropriate Government can either mean the Central Government or the State Government. The Central Government has been defined under section 3(8) and the State Government under section 3(60) of the General Clauses Act, 1897. In relation to an industrial dispute concerning—

1. an industry carried on or under the authority of the Central Government, or a railway company, or
2. an such controlled industry as may be specified in this behalf by the Central Government, or
3. a Dock Labour Board established under Section 5A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), or
4. the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956, or
5. the Employees' State Insurance Corporation established under Section 3 of the Employees' State Insurance Act, 1948 (34 of 1948), or
6. the Board of Trustees constituted under section 3A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948), or
7. the Central Board of Trustees and the State Boards of Trustees constituted under section 5A and section 5B, respectively, of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), or

8. the Life Insurance Corporation of India established under Section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956), or
9. the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956, or
10. the Deposit Insurance and Credit Guarantee Corporation established under Section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961), or
11. the Central Warehousing Corporation established under Section 3 of the Warehousing Corporations Act, 1962 (58 of 1962), or
12. the Unit Trust of India established under Section 3 of the Unit Trust of India Act, 1963 (52 of 1963), or
13. the Food Corporation of India established under Section 3 of the Food Corporation Act, 1964 (37 of 1964), or
14. a Board of Management established for two or more contiguous States under Section 16 of the Food Corporations Act, 1964 (37 of 1964), or
15. the Airports Authority of India constituted under Section 3 of the Airports Authority of India Act, 1994 (55 of 1994), or
16. a Regional Rural Bank established under Section 3 of the Regional Rural Banks Act, 1976 (21 of 1976), or
17. the Export Credit and Guarantee Corporation Limited, or
18. the Industrial Reconstruction Bank of India Limited, or
19. the National Housing Bank established under Section 3 of the National Housing Bank Act, 1987 (53 of 1987), or
20. an air transport service, or
21. a banking company, or
22. an insurance company, or
23. a mine, or
24. an oil-field, or
25. a Cantonment Board, or
26. a "major port, or
27. any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or
28. any corporation, not being a corporation referred to in this clause, established by or under any law

made by Parliament, or

29. the Central public sector undertaking, or
30. subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the Central Government, the appropriate Government would mean the Central Government".

11. In relation to an industrial dispute appropriate Government can either mean Central Government or State Government. Central Government has been defined under Section 3(8) and State Government under Section 3(60) of the General Clauses Act 1897. In relation to any industrial dispute, other than those specified in sub clause (i) of clause (a) of Section 2 of the Act, appropriate Government would be State Government. In other words, all industrial disputes which are outside the purview of sub-clause (i) are concern of the State Government under sub-clause (ii) of clause (a) of Section 2 of the Act. Thus, the general rule is that an industrial dispute raised between employer and his employee would be referred for adjudication by the State Government, except in cases falling under Section 2(a)(i) of the Act. Consequently, where industrial dispute which does not fall within the ambit of Section 2(a)(i) of the Act, appropriate Government cannot be the Central Government.

12. Now it would be to ascertained as to whether the School falls within the ambit of Section 2(a)(i) of the Act, so that the Central Government may exercise the functions of the appropriate Government in the controversy. Letter dated 20-11-2008, filed by the School, encompasses the facts relevant for the present controversy. It is mentioned therein that the School is a private co-educational school operated by an association under the aegis of the American Embassy. Claimant had not disputed the contents of the said letter. Facts detailed in the letter, referred above, are reaffirmed by letter dated 13-05-1982 addressed to His Excellency, Mr. Harry G. Barnes, Junior Ambassador of the United States of America, to India by Shri M.H. Ansari, Chief of Protocol, Ministry of External Affairs, Government of India, New Delhi, wherein it is mentioned that all properties and assets of the School were transferred to the Government of United States of America by the President of India on 18-06-1973, in view of specific conditions spelt out in Foreign Secretary's letter dated 18-06-1973, confirmation of which was received under note No. 277 from the Embassy of United States of America dated 09-07-1976. Thus, it is apparent that the School is a private co-educational institute upon which Central Government does not exercise any control. It is not an industry carried on or under the authority of Central Government. It is also not a controlled industry specified in this behalf by the Central Government. Consequently, it is clear that the School is neither controlled nor carried on or under the authority of the Central Government. Dispute, referred by the Central

Government for adjudication, does not fall within the ambit of Section 2(a)(i) of the Act. Hence, the Central Government is not the appropriate Government for the dispute under reference.

13. Who shall be the appropriate Government for the present dispute? Answer has been provided in clause (a)(ii) of Section 2 of the Act, which contemplates that in relation to any other industrial dispute the State Government is the appropriate Government. However, this Tribunal is not oblivious of the proposition that union territory of Delhi enjoins a special status under the Constitution. Delhi is a Union Territory having some special provisions with respect to its administration. Article 239 of the Constitution speaks that every union territory shall be administered by the President acting, to such extent as he thinks fit, through an administrator to be appointed by him with such designation as he may specify. Article 239 AA makes special provisions with respect to Delhi, detailing therein that the union territory of Delhi shall be called the National Capital Territory of Delhi and the administrator thereof appointed in article 239 shall be designated as the Lieutenant Governor. There shall be Legislative Assembly, and provisions of article 324 to 327 and 329 shall apply in relation the Legislative Assembly of the National Capital Territory of Delhi as they apply in relation to a State. The Legislative Assembly shall have power to make laws for the whole or any part of the National Capital Territory with respect to the matters enumerated in the State List or the Concurrent List except the matters with respect to entries 1, 2 and 18 of the State List and entries 64, 65 and 66 of that list, in so far as they relate to the said entries 1, 2 and 18. The Council of Ministers shall be headed by the Chief Minister to aid and advise the Lt. Governor in exercise of his functions in relation of the matters with respect to which the Legislative Assembly has power to make laws. In case difference of opinion between Lt. Governor and his ministers on any matter, the Lt. Governor shall refer it to the President for decision and act according to the decision given thereon by the President and pending such decision the Lt. Governor is competent to take action in urgent matters. The Chief Minister shall be appointed by the President and Ministers shall be appointed by the President on the advice of the Chief Minister. Therefore, it is evident that though a Legislative Assembly is there in National Capital Territory of Delhi, yet it is a union territory administered by the President through the Administrator appointed by him. In case of difference of opinion between the Administrator and the Ministers, it is the decision of the President that prevails. Consequently the State Government merges with the Centre when Lt. Governor administer the Union Territory or in case of difference of opinion the President decides the issue.

14. State Government has been defined in clause (60) of Section 3 of the General Clauses Act, 1897, in respect of anything done or to be done after commencement of the

Constitution (7th Amendment) Act, 1956 in a case of State, the Governor and in a Union Territory, the Central Government. Therefore, it is evident that for a Union Territory, no distinction has been made between the State and the Central Government. The President administers the Union Territory, through an Administrator appointed by him. In case of National Capital Territory of Delhi, it is being administered by the President though the Lieutenant Governor. Though there is a legislative Assembly and Council of Ministers, yet in case of difference of opinion between the Lieutenant Governor and Council of Ministers, the decision of the President shall prevail, which fact make it clear that for the purpose of administration of the union territory, the Central and the State Government merges over certain matter.

15. High Court of Delhi was confronted with such a proposition in M.K. Jain (1981 Lab. I.C. 62) wherein it was laid as follows:

"The award was sought to be voided, *inter alia*, on the ground that by virtue of the constitution and composition of the Corporation, Central Government was the only authority competent to make a reference of the dispute to the Industrial Court and that the reference by the Lieutenant Governor or Delhi was, therefore, in excess of powers. Even otherwise no exception could be taken to the order of reference, even if it be assumed that Central Government was the appropriate Government, in as much as the distinction between the Central and the State Government in relation to the Union Territory in our constitutional framework is rendered illusory, Union Territory is administered by the President of India under Article 239 of the Constitution of India, acting to such extent as he thinks fit. Therefore the Administrator, to be appointed by him, in the case of Union territory, there is an amalgamation of the constitutional classification of legislative and executive powers between the Centre and the States. According to Section 3(60) of the General Clauses Act, the "Central Government" in relation to the administration of Union Territory means the Administrator acting within the scope of authority given to him under article 239 of the Constitution of India and in terms of Section 3(60) of the General Clauses Act, "State Government" as respects anything done or to be done in the Union Territory means the Central Government. In the case of Union Territory, therefore, the Central and State Governments merge and it is immaterial whether an order of reference is made by one or the other. This contention must, therefore, fail".

16. Again in Mahavir [97 (2002) DLT 922] the High Court was confronted with the same proposition. Relying the

precedent in *M.K. Jain (supra)* with profit it was ruled that reference made by the Government of NCT of Delhi was not bad despite the fact that appropriate Government was the Central Government. Difference of State Government and Central Government goes to the brink of abolition when State Government has been defined as the Central Government by clause (60) of Section 3 of the General Clauses Act and Delhi is being administered by the President through the Administrator appointed by him. Therefore, the aforesaid precedents make it clear that a status of union territory of Delhi can be termed as Central Government in certain matters.

17. Whether the Central Government can be termed as State Government for any purpose? Article 53 of the Constitution provides that the executive power of the Union shall vest in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with the Constitution. Article 73 defines extent of executive power of the Centre, that is, on matters which shall be controlled and administered by the Central executive. It has been detailed therein that the executive power of the union shall extend — (a) to the matters with respect to which Parliament has power to make laws and (b) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement. The extent of the State's executive power is set out in Article 161 of the Constitution. Administrative relations between the union and the states is to be dealt in accordance with the provisions of Article 256, 257, 258, 258A, 260 and 261 of the Constitution. Article 258A was added by 7th Amendment Act, 1956 to make a matching provision to clause (1) of Article 258 of the Constitution. While exercising powers contained in clause (1) of Article 258, the President is empowered to entrust union functions to a State Government or its officers. There was no provisions enabling the Governor of a State to entrust state functions to the Central Government or its officers. That lacuna was found to be of practicable difficulty and provisions of Article 258A were inserted in the Constitution. Thus it is evident that arena of union executive powers and the state executive powers are well defined.

18. Clause (8) of Section 3 of the General Clauses Act defines the Central Government in relation to administration of Union Territory, the Administrator thereof acting within the scope of authority given to him under Article 239 of the Constitution. Therefore, it is evident that Administrator of Government of N.C.T. Delhi has been defined to mean as Central Government to administer the Union Territory of Delhi. Hence for the limited purposes, provided in the Constitution, executive functions of the Central Government can be entrusted to Government of a State or its Officers. The Central Government would not be termed as the State Government, when those functions are being executed by the State Government or its officers. So

executive power of the Union can be exercised, in certain matters by the State Government or its officers but in that situation too the Central Government would not be termed as the State Government. The special provisions referred above would not make the reference, made by the Central Government as the reference made by Government of N.C.T. of Delhi.

19. There is other facet of the coin. This Tribunal was constituted *vide* notification No. A-11020/33/75-CLT dated 30-9-76. It was provided in the notification that the Tribunal has been constituted under the powers provided in sub-section (1) of Section 7-A of the Act, with its head quarter at New Delhi. Another notification was issued on that very date empowering the Tribunal to adjudicate applications moved in sub-section (2) of Section 33-C of the Act, in relation to the workman employed in any 'industry' in the Union Territory of Delhi, in respect of which the Central Government is the appropriate Government. Therefore, the Tribunal has been empowered to adjudicate industrial disputes, in respect of which Central Government is the appropriate Government. As pointed out above, the appropriate Government in this case is the State Government. The issue is thereafter answered in favour of the School and against the claimant.

Issue No. 2.

20. Section 10(1)(d) of the Act empowers the appropriate Government to refer an industrial dispute or any matter appearing to be connected with or relevant to such dispute, whether it relates to any matter specified in the Second or the Third Schedule of the Act for adjudication to the Tribunal constituted under the Act. When a dispute is referred to the Tribunal it is required to adjudicate the industrial dispute. Therefore, it is apparent that the appropriate Government can refer an industrial dispute to the Tribunal, relating to any matter specified in the Second or the Third Schedule of the Act. However, for making such a reference, Government making the reference to the Tribunal should be appropriate Government for that industrial dispute. As pointed out above, the Central Government is not the appropriate Government for the dispute under reference. Consequently, it is clear that the reference of the dispute by the Central Government is incompetent and this Tribunal cannot invoke its jurisdiction to adjudicate this dispute. Therefore, the issue is answered in favour of the School and against the claimant.

21. In view of the findings recorded on the issues, referred above, it is concluded that the reference of the dispute to this Tribunal for adjudication is incompetent, since the Central Government is not the appropriate Government for this dispute. When Central Government is not the appropriate Government for making reference of the dispute for adjudication, this Tribunal cannot invoke its jurisdiction to adjudicate the issues on merits. Consequently, the Tribunal refrains its hands from

adjudication. An award is passed, in view of the observations made above. It be sent to the appropriate Government for publication.

Dated: 22-08-2012

Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 21 सितम्बर, 2012

का.आ.3192.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंध तंत्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण दिल्ली के पंचाट (संदर्भ संख्या 36/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-09-2012 को प्राप्त हुआ था।

[सं. एल-12012/37/2009-आई.आर.(बी-1)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 21st September, 2012

S.O. 3192.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 36/2009) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 21-09-2012.

[No. L-12012/37/2009-IR(B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
NO. 1, KARKARDOOMA COURTS COMPLEX,
DELHI.**

I.D. No. 36/2009

Smt. Sheela Devi w/o late Shri Satya Prakash,
R/o H.No. 445, Village & P.O. Bakhtawarpur, Delhi-110036.

Workman

Versus

1. The Asstt. General Manager,
Region-IV, State Bank of India, Zonal Office,
11, Parliament Street, New Delhi.
2. The Dy. General Manager,
Delhi Zone Office-II,
11, Parliament Street, New Delhi.

Managements

AWARD

In 1984 communal riots took place in the country. In those riots many persons lost their previous lives. Shri Satya Prakash, husband of Smt. Sheela Devi, was also killed in riots. Government of India instructed Public Sector Undertakings to appoint widows of the persons, who lost their lives in riots, on compassionate grounds. In pursuance of those directions Smt. Sheela Devi was appointed as sub staff by State Bank of India (in short the bank) on 21-1-1987. Initially she joined at Service Branch, Parliament Street, New Delhi from where she was transferred to Shakti Nagar Branch of the Bank. She was subsequently transferred to Chitana, Seelampur, Ghonda, Palla and Sameypur branches during tenure of her service. She absented herself from 1988 onwards. A charge-sheet dated 31-3-1994 was served upon her for authorized absence of 461 days from 26-9-1990 to 29-12-1993. Vide order dated 7-10-1994 punishment of warning was given to her for the said mis-conduct. However, she did not improve her conduct. Another charge-sheet dated 27-8-2004 was served upon her for misconducts of unauthorized absence, willful insubordination, refusal to accept lawful orders, habitual late coming and leaving early and not wearing uniform, creating riotous conditions in the premises of the bank and creating over-draft in her account in violation of settlement dated 10-4-2000. A departmental inquiry was conducted and penalty of removal from service was imposed upon her with effect from 13-4-2007. Aggrieved by the said order, Smt. Sheela raised a dispute before the Conciliation Officer. The Bank contested her claim and it resulted in failure of conciliation proceedings. On consideration of failure report submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No. L-12012/37/2009-IR (B-I), New Delhi dated 23-7-2009 with following terms:—

“Whether the action of the management of State Bank of India, New Delhi in terminating services of Smt. Sheela Devi, Ex-Farash-cum-Waterman with effect from 13-4-2007 is justified and legal, if not, to what relief she is entitled?”

2. Claim statement was filed by Smt. Sheela Devi pleading therein that she was appointed by the bank on compassionate ground on 21-12-1987, since her husband was killed in 1984 riots at Delhi. She is an illiterate lady and belongs to country-side. She was given designation of farash-cum-water woman but was forced to work as messenger and as such she was ill-treated and harassed. Work of farash-cum-water woman was never taken from her.

3. She pleaded that she was ill-treated with indecent behavior by staff members. When she made a complaint to the Branch Manager, he sheltered and patronised those employees. Once a messenger pulled back the stool on which she was sitting as a result of which she fell down on

floor. Every body in the hall laughed at her. When she made a complaint to the Branch Manager, no action was taken. Often and then staff members used to pass ugly and filthy remarks on her. Her complaint in that regard proved to be futile. She was subjected to various transfer to Shakti Nagar, Chitana, Seelampur, Ghonda, Palla and Sameypur branches of the bank. Those branches were 15 to 50 kms. away from her residence. Those transfers were in violation of Shastri Award. Her transfer to various places project that the bank was vindictive qua her.

4. Smt. Sheela Devi claims that her basic salary was fixed at Rs. 815.00 on 21.12.1987. Her salary was revised to Rs. 2000.00 with effect from 1.12.1992. thereafter various revisions in pay-scales of subordinate staff took place in terms of 6th, 7th, 8th bipartite settlements but her basic salary was never increased. Since 1994 till 2006 she was paid basic salary of Rs. 2000.00 per month only, which act is a clear example of harassment and victimization continuously for 12 years. Another example of harassment is apparent from the fact that after her hospitalisation from 5.5.2003 to 4.5.2003 she submitted medical bill of Rs. 40793 for reimbursement, on joining her duties. With a view to harass her, the aforesaid bill was not re-imbrused on the pretext that it was mis-placed. No yearly increment was paid to her for the last 12 years, which act is contrary to service rules. For grant of increment and release of pay in revised pay-scales she raised an industrial dispute. On 28.9.2006 the Assistant General Manager admitted before the Conciliation Officer that 90% arrears of her increments would be released within 15 days and remaining 10% would be released within another 15 days after receipt of confirmation of calculation of amount, submitted by her before the Conciliation Officer. Arrears of her wages were not released in accordance with the undertaking given before the Conciliation Officer.

5. In a bid to get rid of her, a charge sheet was served upon her. Charges were false and whimsical. A farce enquiry was conducted and show-cause notice on proposed punishment was served upon her on 27.10.2006. She replied the show-cause notice, *vide* letter dated 3.11.2006. Disciplinary Authority passed on order of her removal from service on 13.4.2007, which order was violative of the provision of Section 33 of Industrial Disputes Act, 1947 (in short the Act), since the disciplinary proceedings were pending before the Conciliation Officer. She filed an Appeal which was dismissed by the Appellate Authority, *vide* order dated 29.8.2007.

6. The claimant further pleads that the enquiry conducted by the bank was not legal. Malafide is writ large as the action of the bank, since after lapse of several years domestic action was initiated against her. Opportunity to defend was not given to her. She was not allowed to defend herself through representative of her union. The entire action was a sham show. Since the enquiry was violative of

principles of natural justice, she is entitled for re-instatement in service with continuity and all other consequential benefits, pleads the claimant.

7. The bank made a demurral pleading that the claim made by Smt. Sheela to the effect that she was ill-treated and harassed, is unfounded. She never made any complaint to the authorities relating to her ill-treatment/indecent behaviour by the employees. There was no question of any shelter or patronisation of any staff member. Had she ever complained to the authorities, action would have been taken as per rules. The incidents of ill-treatment narrated by her are figment of imagination, with a view to extort undue gain from the bank. Her transfer orders were as per exigencies of service. Provisions of Shastri Award were not violated in that regard. The bank presents that issue relating to her release of increments and wages is subject matter of another industrial dispute and it is uncalled for to make reference of that dispute in the present proceedings.

8. Smt. Sheela remained absent in an unauthorized manner from 1998 to 2001 for a considerable long period. Her explanations were called for in that regard. Charge-sheet dated 31.3.1994 was served upon her. She was charge sheeted for various charges such as unauthorized absences, willful insubordination, refusal to accept lawful orders, habitual late coming and leaving early, subversive acts of indiscipline, not wearing uniform supplied by the bank, creating riotous conditions with the help of the outsiders in the premises of the bank and creating over-draft in her account in violation of settlement dated 10.4.2002. Departmental enquiry was held in consonance with rules and principles of natural justice. When charges were proved against her, penalty of removal from service with effect from 13.4.2007 was awarded to her. she preferred an appeal against the order awarding penalty to her, which came to be dismissed. Enquiry was fair and proper and punishment awarded to the claimant commensurate to her mis-conduct. Her entire dues were paid to her according to service conditions.

9. The claimant had not explained any facts which may show that the Disciplinary Authority was biased qua her. The claimant participated in the enquiry and was given full opportunities to defend herself. Since rules do not permit to be defended by an advocate, her request in that regard, made *vide* letter dated 19.2.2007, was declined. She was entitled to be represented by a representative of a registered trade union. However, she herself contested the inquiry with a view to defend the domestic action. Enquiry proceedings were recorded in Hindi and copy of proceedings were tendered to her but she refused to accept. No material came over the record which may reflect on virus of the enquiry. Punishment awarded to her cannot be termed excessive. Her claim being devoid of merits may be dismissed, pleads the bank.

10. On pleadings of the parties following issues were settled:—

1. Whether the enquiry conducted by the management was fair ?
2. As in terms of reference.
3. Relief.

11. Issue No. 1 was treated as preliminary issue. When called upon to adduce evidence, the claimant testified facts to substantiate her claim. Shri S.K. Garg, Manager (HR), entered the witness box to detail facts on behalf of the bank. No other witness was examined by either of the parties.

12. It would not be out of place to mention here that a complaint under Section 33-A of the Act was filed by the claimant, projecting that termination of her service by the bank on 13-4-2007 was in violation of the provision of Section 33 of the Act. During the course of adjudication of the said complaint, it was ruled *vide* award dated 27-7-2010 that the bank was under an obligation to seek approval of their action as contemplated by Section 33(2)(b) of the Act. Since no approval was obtained, action of the bank in award of punishment of removal from service, *vide* order dated 13-4-2007 was violative of section 33(2)(b) of the Act.

13. Parties were called upon to advance arguments on the preliminary issue. In view of the above finding recording by the Tribunal in award dated 27-07-2010 it was concluded that the bank cannot be permitted to claim that the order dated 13-4-2007 was justified. Since the order impugned was void, the bank could not agitate that the enquiry was in consonance with the principles of natural justice. Consequently the issue relating to virus of the enquiry was answered in favour of the claimant and against the bank, *vide* order dated 27-7-2010.

14. Shri S.K. Garg entered the witness box again to prove that the claimant remained absent in an unauthorized manner for a period of 763 days from 3-6-1998 to 20-7-2000. He unfolds that from 1-4-1998 to 11-4-2007 the claimant remained absent in unauthorized manner for 1090 days, without any intimation to the bank. Shri V.K. Nayyar was also examined by the bank to prove her disorderly behaviour, acts subversive of discipline and indecent behaviour qua him on 9-12-1996. No other witness was examined by the bank.

15. To dispel facts unfolded by Shri Garg and Shri Nayyar claimant had entered in the witness box again. She had also examined Shri V.K. Sharma in her defence. No other witness was examined on her behalf.

16. Instead of making oral submissions, Shri Ajay Garg, authorized representative, filed written arguments on behalf of the claimant. Miss Kittu Bajaj, authorized representative for the bank, also filed written submissions.

Parties opted not to advance oral arguments. Record was perused carefully. My findings on issues involved in the controversy are as follows:—

Issue No. 2 :

17. In his affidavit Ex.MW-1/B Shri S.K. Garg, Manager, presents that the claimant remained absent for 763 days continuously from 3-6-1998 to 24-7-2000. He also relied upon Ex. MW-1/4 wherein it has been projected that from 3-6-1998 to 4-7-2000 the claimant remained absent for 783 days. On calculation it was noted that a period of 783 days elapsed from 3-6-1998 to 24-7-2000 and there is clerical mistake in affidavit Ex. MW1/B in that regard. He further unfolds that from 1-5-1998 to 11-5-2007 claimant was absent in unauthorized manner for 1090 days, even without intimation to the bank. During course of cross-examination, he projects that in the after-noon of 2-6-1998 the claimant was relieved from Seelampur branch to join Ghonda Branch of the Bank. She joined her duties at Ghonda branch on 25-7-2000. No wages had been paid to her for that period of absence.

18. Shri V.K. Nayyar details in his affidavit Ex. MW-2/A, tendered as evidence, that on 9-12-1996 transfer orders of Smt. Sheela Devi were served upon her. she refused to accept the letter and continued to visit that branch unauthorizedly and marked her attendance. On 2-8-1996 she refused to perform her duties. On his insistence she refused to carry out his orders. She used un-parliamentary, abusive, derogatory and vulgar language. She called names “KUTEY KIAULAD” and “HARAM KE BEEJ”, besides other dirty abuses hurled in presence of staff members and customers. She disturbed peace of the branch by shouting and abusing consistently for 20 minutes. On 3-8-1996, she was given a memo for that behaviour which is Ex. MW2/1. Entire staff made a complaint against her which is Ex. MW-2/2. When memos Ex. MW-2/3 to Ex. MW2/5 were tendered to her she refused to accept the same. She never wore uniform supplied to her and warning letter was issued in that regard on 7-10-1994.

19. In her affidavit Ex. WW-1/B, tendered as evidence, Smt. Sheela Devi presents that she was not absent for 783 days from 3-6-1998 to 24-7-2000. According to her, her salary for that period was released. She projects that leave record/attendance record has not been filed by the bank. There is nothing on record to show that she was absent in an unauthorized manner for a spell of 31 days, 68, 14, 10, 17, 16 days, besides other period mentioned in Ex.MW 1/4 from 1998 to 2006, but on most of those days she was on sick leave. She claims to be obedient, disciplined and respectful to her superiors. She never used any abusive or vulgar language to anybody. No memo was served upon her in 1996. Shri V.K. Sharma, her authorized representative, went to bank to inspect record relating to her leaves as well as salary paid to her. The bank failed to produce relevant record before him. During course of her cross examination, she was questioned to produced orders on the strength of

which leaves were sanctioned but she opted not to reply the question. When asked to produce any record of her wages for the period for which she has been projected as absent in chart Ex. MW1/4, she opted not to answer the proposition. Same was the case when she was asked to tell whether Ex. MW2/1 bears her signature. She admits that in the year 1996 transfer orders transferring her from Seelampur branch to Ghonda branch of the bank were served upon her. She however projects that those orders were complied by her in 1998. When asked to produce any record relating to compliance of transfer order in 1998, she observed an eerie silence. She admits that she never challenged her transfer orders before a court of law.

20. Shri V.K. Sharma unfolds that he visited various branches of the bank to inspect service records of the claimant. Though he visited service branch, Parliament Street, Palla, Shakti Nagar, Ghonda, Seelampur and other branches of the bank but branch managers showed inability to produce any record relating to leave availed by the claimant and salary paid to her. During the course of his cross examination he concedes that he had not given any letter in writing to Manager (HR) complaining that records were not shown to him by the heads of the branches visited by him.

21. When facts unfolded by Shri Garg, Shri Nayyar and the claimant are appreciated, it emerged over the record that on 2-6-1996 the claimant was serving in Seelampur branch of the bank. On that day Shri Nayyar asked the claimant to hand over some cash vouchers to the Cashier for payment. She refused to carry out those oral orders of Shri Nayyar. When he persisted in his request she did not get up from her seat and started abusing Shri Nayyar in filthiest language. She called him "KUTEY KIAULAD" and "HARAM KE BEEJ" besides other bad names. Staff posted in that branch tried to intervene but to no avail. She continued abusing him for a period of 15-20 minutes. Memo dated 3-8-1996, which is Ex. MW2/1, was served upon her. Though she received that memo but opted not to offer an explanation. Facts detailed in that memo gets reaffirmation from Ex.MW-1/2 which was written by the Secretary, State Bank of India Staff Association, to the Branch Manager and counter-signed by 18 other members of the staff posted at Seelampur branch of the bank. In Ex.MW2/2 it is mentioned that on 2-8-1996 at 1.15 P.M. Smt. Sheela refused to hand over cash vouchers to Cashier, when she was so requested by Shri V.K. Nayyar, Accountant. On this persistent request she started abusing him in filthiest language. The employees posted at that branch showed their inability to work in the Branch, on account of indecent behaviour of the claimant. During course of cross-examination of Shri Nayyar, the claimant failed to dispel facts detailed in Ex.MW-2/1 and Ex.MW-2/2. The claimant adopted posture of skip over in Ex. WW-1/B, relating to contents of Ex. MW-2/1 and Ex.MW-2/2. During course of

her cross-examination, she evaded questions relating to service of memo Ex. MW-2/1 on her. Therefore, it is evident that the claimant had no defence to project relating to service of memo Ex.MW-2/1 and its contents thereof. She nowhere disputes letter Ex.MW-2/2. These documents are to be read against her. When appreciated these documents crystallized that on 2-8-1996 the claimant refused to carry out lawful orders of Shri Nayyar. She was duty bound to place cash vouchers on the seat of the Cashier, when so asked by Shri Nayyar. It is apparent that intentionally Smt. Sheela Devi opted to defy orders of her superiors.

22. It is also apparent that when Shri Nayyar insisted upon her to carry out the lawful orders, she showed insubordination and opted not to get up from her seat. Contra to it she used filthiest language against Shri Nayyar. The language used by the claimant is not only indecent but it does not behave for a lady to utter such words that too in presence of the staff and customers of the bank. When such picture is perceived, it emerges that there was a scene of indiscipline and indignance in the premises of the bank. An employee, who was duty bound to carry out orders of her superior, not only put decorum of the office at naught but she crossed all parameters of decency and behavior. She not only humiliated her superior but employees present in the bank, customers who were there and the institution also. Such behavior degrades the institution to the lowest level in case it becomes a routine amongst its employees. Consequently an ordinary prudent man would form an opinion that behavior projected by the claimant on 2.8.1996 at 1:15 pm at Seelampur branch of the bank was debase. Such a behavior amounts to gross misconduct.

23. Shri Nayyar proves document Ex.MW2/3 to Ex.MW2/7. Ex.MW2/3 is a memo addressed to the claimant, wherein it has been detailed that she visits as well as leaves the branch at her convenience. It has also been detailed therein that on 8 and 9 of August 1996 she had not carried out any work in the branch. She was called upon to explain as to why her wages for those two days may not be deducted on the doctrine of "no work no pay". She refuses to accept that memo. Memo Ex.MW2/4 was also not accepted by her. Ex MW2/5 was not accepted by the lady when tendered to her. Ex.MW2/6 is the copy of attendance register for 1-5-1998 and Ex.MW2/7 are copies of attendance register dated 1-5-1998 and 4-5-1995, upon which a note is recorded to the effect that claimant signs attendance record in the morning and at that very time she records her time of departure too for that day. It has also been mentioned therein that she leaves the bank at her convenience and does not work at all. These documents remained unassailed. Therefore, it is apparent that Smt. Sheela not only refused to accept letters/memos but behaved in an arrogant manner. She had taken all officers and employees of the branch for granted and acted according to her whims and convenience.

Discipline, decorum and decency were the first casualties, made by her acts and conduct. Consequently it is apparent that the claimant had behaved in most irresponsible manner and her acts and conduct were subversive of discipline.

24. Shri S.K. Garg presents facts which make the situation more alarming. He highlights that Smt. Sheela remained absent in an unauthorised manner from 3-6-1998 to 24-7-2000. he details during course of his cross examination that the claimant remained posted in Seelampur branch of the bank till 2-6-1998. She was relieved from Seelampur branch in afternoon of 2-6-1998 to join Ghonda branch of the bank. She remained absent till 24-7-2000 and joined her duties at Ghonda branch on 25-7-2000 only. Her attendance record, which is Ex.MW1/W1, projects that fact. When she was confronted with the factum of her absence from 3-6-1996 to 24-7-2000, she could not offer any explanation. Question was put repeatedly calling upon her to explain as to when she joined Ghonda branch of the bank, but she opted not to reply it. Out of above facts, testified by Shri Garg, it emerges that the claimant remained absent from 3-6-1998 to 24-7-2000, that is, for a period of 783 days.

25. Shri Garg, also presents that Smt. Sheela Devi remained absent for a period of 31 days from 6-9-2001 to 6-10-2001, 68 days from 5-5-2003 to 11-7-2003, 14 days from 17-12-2004 to 30-12-2004, 10 days from 31-1-2005 to 9-2-2005, 17 days from 7-11-2005 to 23-11-2005, 16 days from 13-12-2005 to 8-12-2005 and 6 days from 2-11-2006 to 7-11-2006, besides various other periods of absence detailed in Ex.MW1/4. When he was confronted with the attendance record he conceded that it was mentioned therein that on 11-4-2001, 12-4-2001, 20-11-2001, 5-12-2001, 6-12-2001, 2-1-2002, 31-1-2002, 8-2-2002, 18-2-2002, 28-2-2002, 18-3-2002, 31-3-2002, 27-4-2002, 1-5-2002, 2-5-2002, 18-6-2002, 13-9-2002, 13-11-2002, 13-1-2003, 26-8-2003, 11-9-2003, 8-10-2005, 6-2-2007, 7-2-2007 and 11-4-2007 the claimant was on leave. However, he explains that it had been so recorded due to inadvertence. He makes it clear that her leave for the aforesaid periods were not sanctioned. It was not brought over the record by the claimant that leaves for above dates were sanctioned by the bank. Even otherwise the dates referred above projects spells of 1 or 2 days only. For longer periods, referred above, for which Smt. Sheela Devi remained absent unauthorizedly, no eyebrows were raised on the testimony of Shri Garg. It is evident that the bank has been able to bring it over the record that Smt. Sheela Devi was a habitual absentee from her duties for a longer period at intervals. She made a faint attempt to project that her attendance/leave record was not made available. Had she been on leave on medical ground or otherwise there would have been some record in her possession also to show that leave applications were moved by her. She could not raise even a ripple to the effect that she moved leave applications which were granted in her favour. Therefore, it stands crystallized that Sheela

Devi absented herself from duties unauthorizedly, even without intimating the bank.

26. It would be considered now as to whether above acts/conduct of the claimant amount to gross misconduct? For an answer the history of disciplinary action for award staff is to be traced. For an answer to proposition so raised, it is expedient to detail disciplinary powers available to the bank. Shastri Award enlists gross misconduct and minor misconduct in respect of which disciplinary action may be taken against an employee. In para 521 (4) it defines gross misconduct as following acts and omissions on the part of an employee:

“(4) By the expression “gross misconduct” shall be meant any of the following acts and omissions on the part of an employee;

- (a) engaging in any trade or business outside the scope of his duties except with the permission of the bank;
- (b) unauthorized disclosure of information regarding the affairs of the bank or any of its customers or any other person connected with the business of the bank which is confidential or the disclosure of which is likely to be prejudicial to the interests of the bank;
- (c) drunkenness or riotous or disorderly or indecent behaviour on the premises of the bank;
- (d) willful damage or attempt to cause damage to the property of the bank or any of its customers;
- (e) willful insubordination or disobedience of any lawful and reasonable order of the management or of a superior;
- (f) habitual doing of any act which amounts to "minor misconduct" as defined below, "habitual" meaning a course of action taken or persisted in notwithstanding that at least on three previous occasions censure or warnings have been administered or an adverse remark has been entered against him;
- (g) wilful slowing down in performance of work;
- (h) gambling or betting on the premises of the bank;
- (i) speculation in stocks, shares, securities or any commodity, whether on his account or that of any other persons;
- (j) doing any act prejudicial to the interests of the bank, or gross negligence or negligence involving or likely to involve the bank in serious loss;
- (k) giving or taking a bribe or illegal gratification from a customer or an employees of the bank;
- (l) abetment or instigation of any of the acts or omissions above mentioned”.

27. In para 521(5) penalties which may be imposed for gross misconduct have been detailed which are extracted thus:

"(5) An employee found guilty of gross misconduct may:

- (a) be dismissed without notice, or
- (b) be warned or censured, or have an adverse remark entered against him, or
- (c) be fined, or
- (d) have his increment stopped, or
- (e) have his misconduct condoned and be merely discharged.

28. Minor misconduct shall mean any of the following acts and omission on the part of an employee, as obtained in para 521(6) of the Shastri Award:

"(6) By the expression "minor misconduct" shall be meant any of the following acts and omissions on the part of an employee;

- (a) absence without leave or overstaying sanctioned leave without sufficient grounds;
- (b) unpunctual or irregular attendance;
- (c) neglect of work, negligence in performing duties;
- (d) breach of any rule of business of the bank or instruction for the running of any department;
- (e) committing nuisance on the premises of the bank;
- (f) entering or leaving the premises of the bank except by an entrance provided for the purpose;
- (g) attempt to collect or collecting monies within the premises of the bank without the previous permission of the management or except as allowed by any rule or law for the time being in force;
- (h) holding or attempting to hold or attending any meeting on the premises of the bank without the previous permission of the management or except in accordance with the provisions of any rule or law for the time being in force;
- (i) canvassing for union membership or collection of union dues or subscriptions within the premises of the bank without the previous permission of the management or except in accordance with the provisions of any rule or law for the time being in force;
- (j) failing to show proper consideration, courtesy or attention towards officers, customers or other employees of the bank; unseemly or unsatisfactory behaviour while on duty;
- (k) marked disregard of ordinary requirements of decency and cleanliness in person or dress;
- (l) incurring debts to an extent considered by the management as excessive;

29. Punishment while may be awarded for minor misconduct have been maintained in para 521(7) of the said award, which are extracted thus:

"(7) An employee found guilty of minor misconduct may;

- (a) be warned or censured; or
- (b) have an adverse remark entered against him, or
- (c) have his increment stopped for a period not longer than six months".

30. In para 18.28, Desai Award makes it clear that procedure laid down by Shastri Tribunal "for termination of employment and taking other disciplinary action" in paragraphs 520 and 521 and in paragraphs 518 and 519 to the extent quoted above, subject to the modification indicated shall remain the same.

31. In bipartite settlement dated 19th October, 1966 commonly known as 1st bipartite settlement no change was made either in the misconducts described as gross misconduct or minor misconduct, besides penalties provided for the same. In para 19.9 it was mentioned that a workman found guilty of a misconduct, whether gross or minor, shall not be given more than one punishment in respect of any one charge. In settlement dated 22-11-79, punishments provided for gross-misconduct were supplemented with following punishments, besides those already provided:

- (a) have his special allowance withdrawn, or
- (b) have his pay reduced to the next lower stage up to a maximum period of two years, in case he had reached the maximum in the scale of pay.

32. In sixth bipartite settlement dated 14-2-95 following sub-clauses were added under the head "gross misconduct", defined in 1st bipartite settlement and Shastri Award:

- (p) remaining unauthorisedly absent without intimation continuously for a period exceeding 30 days;
- (q) misbehaviour towards customers arising out of bank's business;
- (r) contesting election for Parliament/Legislative Assembly/Legislative Council/local bodies/municipal corporation/panchayat, without explicit written permission of the bank;

33. Following clauses were also added under "minor misconduct" defined in 1st bipartite settlement and Shastri Award:

- (n) refusal to attend training programmes without assigning sufficient and valid reason.
- (o) not wearing while on duty, identity card issued by the bank.

34. Punishments, provided for gross misconduct by Shastri Award and 1st bipartite settlement were substituted by sixth bipartite settlement. In para 21(4) following punishments were provided for gross misconduct.

- (a) be dismissed without notice; or
- (b) be removed from service with superannuation benefits i.e. Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment; or
- (c) be compulsorily retired with superannuation benefits i.e. Pension and/or Provident fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment; or
- (d) be discharged from service with superannuation benefits i.e. Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment; or
- (e) be brought down to lower stage in the scale of pay up to a maximum of two stages; or
- (f) have his increment/s stopped with or without cumulative effect; or
- (g) have his special pay withdrawn; or
- (h) be warned or censured, or have an adverse remark entered against him; or
- (i) be find.

35. Various acts of misconduct were added to the definition of "gross misconduct" by bipartite settlement dated 10-4-2002. Sub-para (5) of the said settlement defines "gross-misconduct" as any of the following acts and omissions on the part of an employee:

- "(5) By the expression "gross misconduct" shall be meant any of the following acts and omissions on the part of an employee:
- (a) engaging in any trade or business outside the scope of his duties except with the written permission of the bank;
 - (b) unauthorized disclosure of information regarding the affairs of the bank or any of its customers or any other person connected with the business of the bank which is confidential or the disclosure of which is likely to be prejudicial to the interests of the bank;
 - (c) drunkenness or riotous or disorderly or indecent behavior on the premises of the bank;
 - (d) willful damage or attempt to cause damage to the property of the bank or any of its customers;

- (e) willful insubordination or disobedience of any lawful and reasonable order of the management or of a superior;
- (f) habitual doing of any act which amounts to "minor misconduct" as defined below "habitual" meaning a course of action taken or persisted in, notwithstanding that at least on three previous occasions censure or warnings have been administered or an adverse remark has been entered against him;
- (g) willful slowing down in performance of work;
- (h) gambling or betting on the premises of the bank;
- (i) speculation in stocks, shares, securities or any commodity whether on his account or that of any other persons;
- (j) doing any act prejudicial to the interest of the bank or gross negligence or negligence involving or likely to involve the bank in serious loss;
- (k) giving or taking a bribe or illegal gratification from a customer or an employee of the bank;
- (l) abetment or instigation of any of the acts or omission above mentioned;
- (m) knowingly making a false statement in any document pertaining to or in connection with his employment in the bank;
- (n) resorting to unfair practice of any nature whatsoever in any examination conducted by the Indian Institute of Bankers or by or on behalf of the bank and where the employee is caught in the act of resorting to such unfair practice and a report to that effect has been received by the bank from the concerned authority;
- (o) resorting to unfair practice of any nature whatsoever in any examination conducted by the Indian Institute of Bankers or by or on behalf of the bank in cases not covered by the above Sub-Clause (n) and where a report to that effect has been received by the bank from the concerned authority and the employee does not accept the charge;
- (p) remaining unauthorisedly absent without intimation continuously for a period exceeding 30 days;
- (q) misbehaviour towards customers arising out of bank's business;
- (r) contesting election for Parliament/Legislative Assembly/Legislative Council/local bodies/municipal corporation/panchayat, without explicit written permission of the bank;
- (s) conviction by a criminal Court of Law for an offence involving moral turpitude;
- (t) indulging in any act of 'sexual harassment' of any woman at her workplace;

Note: Sexual harassment shall include such unwelcome sexually determined behaviour (whether directly or otherwise) as—

- (a) physical contact and advances;
- (b) demand or request for sexual favours;
- (c) sexually coloured remarks;
- (d) showing pornography; or
- (e) any other unwelcome physical, verbal or non-verbal conduct of a sexual nature;
- (u) (For State Bank of India)

the giving or taking or abetting the giving or taking of dowry or demanding directly or indirectly from the parents or guardians of a bride or bridegroom, as the case may be, any dowry”.

36. Punishments for “gross misconduct” were enlisted in sub-para (6) of the said settlement as follows:

“(6) An employee found guilty of gross misconduct may:

- (a) be dismissed without notice; or
- (b) be removed from service with superannuation benefits i.e. Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment; or
- (c) be compulsorily retired with superannuation benefits i.e. Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment; or
- (d) be discharged from service with superannuation benefits i.e. Pension and/or Provident Fund and Gratuity as would be due otherwise under Rules or Regulations prevailing at the relevant time and without disqualification from future employment; or
- (e) be brought down to lower stage in the scale of pay up to a maximum of two stages; or
- (f) have his increment/s stopped with or without cumulative effect; or
- (g) have his special pay withdrawn; or
- (h) be warned or censured, or have an adverse remark entered against him; or
- (i) be find.

37. Sub-para (7) of the said settlement defines “minor misconduct” as any of the following acts and omissions on the part of an employee:

- (a) absence without leave or overstaying sanctioned leave without sufficient grounds;

- (b) unpunctual or irregular attendance;
- (c) neglect of work, negliance in performing duties;
- (d) breach of any rule of business of the bank or instruction for the running of any department;
- (e) committing nuisance on the premises of the bank;
- (f) entering or leaving the premises of the bank except by an entrance provided for the purpose;
- (g) attempt to collect or collecting moneys within the permises of the bank without the previous permission of the management or except as allowed by any rule or law for the time being in force;
- (h) holding or attempting to hold or attending any meeting on the premises of the bank without the previous permission of the management or except in accordance with the provisions of any rule or law for the time being in force;
- (i) canvassing for union membership or collection of union dues or subscriptions within the premises of the bank without the previous permission of the management or except in accordance with the provisions of any rule or law for the time being in force;
- (j) failing to show proper consideration, courtesy or attention towards officers, customers or other employees of the bank, unseemly or unsatisfactory behaviour while on duty;
- (k) marked disregard of ordinary requirements of decency and cleanliness in person or dress;
- (l) incurring debts to an extent considered by the management as excessive;
- (m) resorting to unfair practice or any nature whatsoever in any examination conducted by the Indian Institute Bankers or by or on behalf of the bank in cases not covered by sub-clause (n) under “Gross Misconduct” and where a report to that effect has been received by the bank from the concerned authority and the employee accepts the charge;
- (n) refusal to attend training programmes without assigning sufficient and valid reasons;
- (o) Not wearing, while on duty, identity card issued by the bank;
- (p) Not wearing, while on duty, the uniforms supplied by the bank, in clean condition.

38. Punishments which may be awarded for minor misconduct, are detailed in sub-para (8) of the settlement as follows:

“8. An employee found guilty of minor misconduct may:

- (a) be warned or censured; or

- (b) have an adverse remark entered against him; or
- (c) have his increment stopped for a period not longer than six months".

39. From the above facts relating to the service conditions of award staff of the bank it is emerging that unauthorized absence without intimation exceeding for a period of 30 days, willful insubordination, refusal to accept lawful orders, acts subversive of discipline, riotous and disorderly behaviour on the premises of the bank are gross misconduct. Question for consideration would be as to what punishment would be appropriate to such misconducts committed by the claimant. An employee is under an obligation not to absent himself from work place without good cause. Absence without leave is misconduct in industrial employment warranting disciplinary punishment. Habitual absence from duty without leave has also been made misconduct under model standing orders framed under the Industrial Employment. (Standing Orders) Act 1946. When an employee absents himself, he must have applied for an obtained leave from the employer. No employee can claim leave of absence as a matter of right and remaining absent without leave will constitute violation of discipline. Quantum of punishment for such cases would depend upon facts of each case. In order to justify extreme penalty of discharge or dismissal it is to be proved that the employee remained absent without leave for an inordinate long period or has habituated to absent himself from duty. Here in the case the bank has been able to project that the claimant remained absent without leave for an inordinate long period, besides being habituated to absent herself from duty. Her removal from service would be justified, on account of her inordinate long absence without leave.

40. She behaved in a riotous and disorderly manner on 2-8-1996 at 1.20 P.M. at Seelampur Branch of the bank. Riotous or disorderly behaviour was committed by her during business hours of the bank, that too in presence of customers. It led other employees to feel that it would be difficult for them to serve the branch, under the conditions which prevailed that day. That act was subversive of discipline also. Besides that the claimant refused to accept memos and carry out lawful orders of her superior. Consequently it is evident that dis-orderly behaviour committed by her within the premises of the bank is of alarming complexion.

41. Her refusal to carry out orders of her superior's amount to insubordination. She was under an obligation to obey lawful orders given to her by her superiors. It was beyond her competence to defy those orders. She opted not to submit her to the authorities of her superiors and thus committed serious misconduct. Willful insubordination or disobedience of orders of her superiors has been treated a serious misconduct under the industrial law. All these circumstances make me to comment that her continuance in the service of the bank is not justified. Consequently

punishment of removal from service with superannuation benefits is found proportionate to her misconduct. It is, therefore, announced that her removal from service with superannuation benefits is neither disproportionate nor amounts to act of victimization or unfair labour practice.

42. Whether penalty of removal from service would relate back to the date of order passed by the bank? For an answer, it is expedient to consider the precedents handed down by the Apex Court. In *Ranipur Colliery* [(1959) Supp. 2 SCR 719] the employer conducted a domestic enquiry though defective and passed an order of dismissal and moved the Tribunal for approval of that order. It was ruled therein that if the enquiry is not defective, the Tribunal has only to see whether there was a prima facie case for dismissal and whether the employer had come to the bonafide conclusion that the employee was guilty of misconduct. Thereafter on coming to that conclusion that the employer had bonafide come to the conclusion that the employee was guilty, that is, there was no unfair labour practice and no victimization, the Tribunal would grant the approval which would relate back to the date from which the employer had ordered the dismissal. If the enquiry is defective for any reason, the Tribunal would also have to consider for itself on the evidence adduced before it whether the dismissal was justified. However on coming to the conclusion on its own appraisal of evidence adduced before it that the dismissal was justified its approval of the order of dismissal made by the employer on defective enquiry would still relate back to the date when order was made.

43. In *Phulbari Tea Estate* [1960 (i) S.C.R. 32] the domestic enquiry held by the employer culminating in the order of dismissal was found to be invalid, being in gross violation of the rules of natural justice. Even before the Tribunal, the employer did not lead proper evidence to justify the order of dismissal and contended itself by merely producing the statement of certain witnesses recorded during the domestic enquiry and the workman had no opportunity to cross-examine the witnesses before the Tribunal. In the absence of any evidence before it, justifying the dismissal, the Tribunal set aside the order of dismissal and granted compensation in lieu of reinstatement, which order was upheld by the Apex Court. In that case question of relating back of the order of dismissal did not arise.

44. In *P.H. Kalyani* [1963 (1) LLJ 673] the employer dismissed the workman after holding a domestic enquiry into the charges. Since some dispute was pending before the Industrial Tribunal, the employer applied for "approval" of action of dismissal in compliance with the proviso to section 33(2)(b) of the Act. The workman made an application under section 33-A of the Act. Apart from relying on validity of domestic enquiry, the employer adduced all the evidence before the Tribunal in support of its action. On basis of evidence before it, the Tribunal came to the

conclusion that the facts of misconduct committed by the workman were of serious nature involving danger to human life and therefore dismissed the application under section 33-A and accorded "approval" to the action of dismissal taken by the employer. In this situation the Apex Court held that if the enquiry is not defective and the action of the employer is bonafide, the Tribunal will grant the approval" and the dismissal would "relate back to the date from which the employer had ordered dismissal". If the enquiry is invalid for any reason, the Tribunal will have to consider for itself on the evidence adduced before it, whether the dismissal was justified. If it comes to the conclusion on its own appraisal of such evidence that the dismissal was justified, the dismissal would "still relate back to the date when the order was made". Sasa Musa Sugar Works case (supra) was distinguished saying that observations made therein "apply only to a case where the employer had neither dismissed the employee nor had come to the conclusion that a case for dismissal had been made. In that case, the dismissal of the employee takes effect from the date of the award and so until then the relation of employer and employee will continue in law and in fact".

45. D.C. Roy [(1976) Lab. I.C. 1142] is the illustration where domestic enquiry held by the employer was found to be invalid being violative of principles of natural justice and the employer had justified the order of dismissal by leading evidence before the Labour Court, on appraisal of which the Labour Court found the order of dismissal justified. In appeal, the Apex Court upheld the award with the observation that "the ratio of Kalyani's case (supra) would therefore, govern the case and the judgement of the Labour Court must relate back to the date on which the order of dismissal was passed".

46. In Gujarat Steel Tubes Ltd. [1980 (1) LLJ 137] inverted image of the D.C. Roy's case was presented by a majority of three judge bench wherein it was held that "where no enquiry has preceded punitive discharge, and the Tribunal for the first time upholds the punishment, this court in D.C. Roy vs. Presiding Officer (supra) has taken the view that full wages be paid untill the date of the award. There cannot be any relation back of the date of dismissal when the management passed the void order". Though the court ruled that law laid in D.C. Roy is correct yet it followed obiter instead of the decision. Observations of the Apex Court in above decision, bearing on the relate back rule, were faulted in R. Thiruvirkolam [1997 (1) SCC 9] on the ground that they "are not in the line with the decision in Kalyani which was binding or with D.C. Roy to which Learned Judge Krishna Iyer J. was a party. It also does not match with the juristic principle discussed in Wade". The view taken in R. Thiruvirkolam (supra) was affirmed in Punjab Dairy Development Corporation Ltd. [1997 (2) LLJ 1041].

47. In view of the catena of decisions, detailed above, it is clear that an employer can justify its action by leading evidence before the Tribunal. This equally applies to cases of total absence of enquiry and defective enquiry. A case of defective enquiry stands on the same footing as no enquiry. If no evidence is led or evidence adduced does not justify the dismissal by the employer, the Tribunal can order reinstatement or payment of compensation as it may think fit. But if it finds on the evidence adduced before it that the dismissal is justified, the doctrine of relate back is pressed into service to bridge the time gap between the rupture of the relationship of employer and employee and the finding of the Tribunal.

48. If the workman is to be paid wages upto the date of the award of the Tribunal, the Parliament has to enact so, declares the Delhi High Court in Ranjit Singh Tomar (ILR 1983 Delhi 802). Obviously the Act does not make any provision for the situation. Precedents in Ghanshyam Das Shrivastava [1973 (1) SCC 656], Capt. M. Paul Anthony [1999 (3) SCC 679] and South Bengal State Transport Corporation [2006 (2) SCC 584] nowhere deal with the controversy, hence are not discussed.

49. However it is settled a proposition that there is a distinction between the order which is void and an order which suffers from irregularities. The order which is void cannot relate back, while the order which suffers from some irregularities may relate back to the date of punishment. The Apex Court in Gujrat Steel Tubes Ltd. [1980 (40) F.L.R.152] took note of such a situation, which proposition was reaffirmed in Engineering Laghu Udyog Employees Union [2004 (100) F.L.R. 843]. The law so laid is reproduced below:

"Kalyani was cited to support the view of relation back of the Award to the date of the employer's termination orders. We do not agree that the ratio of Kalyani corroborates the proposition propounded. Jurisprudentially, approval is not creative but confirmatory and therefore relates back. A void dismissal is just void and does not exist. If the Tribunal, for the first time, passes an order recording a finding of misconduct and thus breathes life into the dead shall of the Management's order, predating of the nativity does not arise. The reference to Sasa Musa in Kalyani enlightens this position. The latter case of D.C. Roy v. The Presiding Officer, Madhya Pradesh Industrial Court, Indore and others (supra) specifically refers to Kalyani's case and Sasa Musa's case and holds that where the Management discharges a workman by an order which is void for want of an enquiry or for blatant violation of rules of natural justice, the relation back doctrine cannot be invoked. The jurisprudential difference between a void order, which by a subsequent judicial

resuscitation comes into being de novo, and an order, which may suffer from some defects but is not still born or void and all that is needed in the law to make it good is a subsequent approval by a Tribunal which is granted. cannot be obfuscated.”

“When in terms of the proviso appended to clause (b) of section 33 of the Act, an approval is sought for and is refused, the order of dismissal becomes void. If an approval is not obtained still, the order of punishment cannot be given effect to. It is, therefore, not correct to content that the Tribunal in a reference under Section 10 of the Act, when passes an order recording a finding of misconduct, bring life into the dead. Unfortunately, the Court did not take notice of the binding decisions in Motipur Sugar Factory's case (supra) and Firestone's case (supra)”.

50. In view of above discussion, it is concluded that order of removal from service with superannuation benefits, which is found proportionate to the misconduct committed by Smt. Sheela would not relate back to the date when the bank passed that order on 13-4-2007. As detailed above, in award dated 27-7-2010, the order of punishment passed by the bank was held to be non-est, being violative of the provisions of section 33(2)(b) of the Act. By way of findings recorded by the Tribunal, it does not attempt to rejuvenate that order. Resultantly the order of removal from service would come into operation from the date of the award. Therefore awarding punishment of removal from service with superannuation benefits to Smt. Sheela Devi, an award is, accordingly, passed. It be sent to the appropriate Government for publication.

Date: 31-08-2012 Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 21 सितम्बर, 2012

का.आ.3193.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार जनरल मैनेजमेंट, ऑर्डिनेन्स फैक्ट्री, इटारसी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सी.जी.आई.टी./एल.सी./आर./82/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-09-2012 को प्राप्त हुआ था।

[सं. एल-14012/54/2003-आईआर (डीयू)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 21st September, 2012

S.O. 3193.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/82/2004) of the Central Government Industrial

Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial dispute between the General Management, Ordnance Factory, Itarsi and their workman, which was received by the Central Government on 21-09-2012.

[No. L-14012/54/2003-IR(DU)]

SURENDRA KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/82/2004

Presiding Officer: Shri Mohd. Shakir Hasan
Shri Ram Kishore Chourey,
Qr. No. 1103/A, Ayudh Nagar,
Itarsi

... Workman

Versus

General Management,
Ordnance Factory,
Itarsi,

... Management

AWARD

Passed on this 9th day of August, 2012

1. The Government of India, Ministry of Labour *vide* its Notification No. L-14012/54/2003-IR(DU) dated 22-6-2004 has referred the following dispute for adjudication by this tribunal:—

“Whether the action of the management of General Manager, Ordnance Factory, Itarsi in imposing the penalty of reduction of pay by three stages of the grade of Darwan from Rs. 3140 to Rs. 2960 per month in the time scale of pay of Rs. 2550-55-2660-60-3200 for a period of one year with cumulative effect and also imposing compulsory retirement from service in respect of Shri Ram Kishore Chourey is justified? If not, to what relief the workman is entitled to?”

2. The case of the workman, in short, is that he was Darwan in the management department, Itarsi and was in night duty on 20-1-2001. He was served with a chargesheet dated 24-2-2001 under rule 14 of CCS (CCA) Rules, 1965 for attending duty after consuming alcohol for abusing and misbehaving with the superiors on duty and for a conduct unbecoming of a Govt. servant. He denied the charges by giving reply. The Disciplinary Authority was unsatisfied from his reply and initiated a departmental enquiry. The Enquiry Officer and the Presenting Officer were appointed. The delinquent workman was also assisted by the Defence Assistant. After enquiry, the Enquiry Officer submitted his enquiry report holding him guilty of the charges. The

Disciplinary Authority agreed with the findings imposed the penalty of reduction of three stages in the time scale of pay. The workman preferred an appeal. The Appellate Authority disagreed with the penalty imposed on the workman considering the seriousness of the charges and enhanced the punishment by awarding the compulsory retirement from the service *vide* order dated 8-8-2002. It is stated that the superiors were annoyed with the workman due to union activity. It is stated that the findings of the Enquiry Officer is perverse. It is stated that the punishment is highly harsh and excessive. It is submitted that the reference be answered in his favour with all back wages.

3. The management appeared and filed Written Statement in the case. The case of the management, *inter alia*, is that the workman was admittedly Darwan in night shift on 20/21-1-2001 when he was in alcoholic condition and misbehaved with the superiors. He was chargesheeted on 24-2-2001 for the alleged misconduct. After enquiry, the Enquiry Officer found him guilty of the charges and submitted his report. The Disciplinary Authority agreed with the findings of the Enquiry Officer and imposed the punishment in reduction of pay scale. The workman preferred an appeal. The Appellate Authority disagreed with the punishment as the charges proved was serious in nature and issued show cause to the workman who gave representation. After considering the entire materials, the Appellate Authority passed the order of compulsory retirement from services on 8-8-2002. It is stated that the witnesses had supported the charges of the workman and the finding of the enquiry officer is not perverse. It is submitted that there is no illegality in awarding the punishment to the workman. He is not entitled to any relief.

4. On the basis of the pleadings of the parties, the following issues are formulated—

- I. Whether the departmental enquiry conducted by the management against the workman is legal and proper?
- II. Whether the findings of the Enquiry officer is perverse?
- III. If not, whether the punishment awarded to the workman is disproportionate to the charges proved against him?
- IV. To what relief, the workman is entitled?

5. Issue No. I

This issue is taken up as preliminary issue. After hearing the parties and after perusing the entire documents of the departmental proceedings, it is held that the departmental proceeding conducted against the workman is legal and proper on 6-6-2011.

Thus it is clear that this issue is already decided earlier against the workman and the same is not challenged in any court of law.

6. Issue No. II

It is not out of place to say that none of the party has adduced any fresh evidence on the point of charges. The evidence adduced before the Enquiry Officer shows that six witnesses were examined by the management against the workman who were cross-examined by the Defence Assistant. It also appears that two witnesses in defence were also examined. It is clear from page 49 of the departmental proceedings that the doctor Shri N.R. Lalji, Senior Medical officer was also examined. He had stated that he found the workman positive in alcoholic condition. This itself shows that he was in alcoholic condition on duty. The witnesses had also supported that he had misbehaved with the superiors at the alleged time. Thus I find that the finding of the Enquiry Officer is not perverse. This issue is decided against the workman and in favour of the management.

7. Issue No. III

On the basis of the discussion made above, it is clear that the enquiry proceedings is already held as legal and proper on 6-6-2011 and the findings of the Enquiry Officer appears to be not perverse and no fresh evidence on the point of charges is adduced in the case. Thus it is not proper to re-appreciate the evidence and to interfere with the punishment imposed on the workman. I find no reason to interfere in the punishment order passed by the Appellate Authority.

8. The learned counsel for the management has argued that this is a case of compulsory retirement and it doesnot come within the purview of Section 11A of the Industrial Dispute Act, 1947 (in short the Act, 1947). It appears that the Section 11A of the Act, 1947 is with regard to give appropriate relief in case of discharge or dismissal of workmen. This case doesnot come in the purview of Section 11A of the Act. I, therefore also agree that the interference in the punishment order is not justified. This issue is also decided against the workman and in favour of the management.

9. Issue No. IV

It is clear that the action of the management in awarding the aforesaid punishment to the workman is legal and justified. The workman is not entitled to any relief. Accordingly the reference is answered.

10. In the result, the award is passed without any order to costs.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 21 सितम्बर, 2012

का.आ. 3194.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार जनरल मैनेजर, मदर डेरी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नई दिल्ली के पंचाट (संदर्भ संख्या 58/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-9-2012 को प्राप्त हुआ था।

[सं.एल.-42011/41/2000-आई आर (डी यू)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 21st September, 2012

S.O. 3194.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947) the Central Government hereby publishes the award (Ref. No. 58/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure, in the Industrial dispute between the General Manager, Mother Dairy and their workman, which was received by the Central Government on 21-09-2012.

[No. L-42012/41/2000-IR(DU)]

SURENDRA KUMAR, Section Officer

ANNEXURE

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
NO. 1, KARKARDOOMA COURTS COMPLEX: DELHI**

I.D.No. 58/2011

Shri Dalip Singh,
H.No. 4/194, Lalita Park,
Laxmi Nagar,
Delhi-110092

....Claimant

Versus

The General Manager,
Mother Dairy,
Patparganj,
New Delhi

...Management

ORDER

An industrial dispute, referred to this Tribunal for adjudication, *vide* order No. L-42011/41/2000-IR(DU), New Delhi, dated 28th September, 2000 was articulated *vide* award dated on 20-07-2012. Inadvertently on first page of the award, party to the dispute *viz.* General Manager, Mother Dairy, Patparganj, New Delhi was reflected as General Manager, Bank of Baroda, Zonal Office, Parliament Street, New Delhi.

2. Letter dated 04-09-2012 was transmitted by the Section Officer, Ministry of Labour and Employment, Govt.

of India, New Delhi, wherein above mistake has been highlighted. A request has been made to make necessary correction in the award, in that regard.

3. Rule 28 of the Industrial Disputes (Central) Rules 1957 provides for correction of errors. For sake of ready reference aforesaid rule is extracted thus:

“The Labour Court, Tribunal National Tribunal or Arbitrator may correct any clerical mistake or error arising from an accidental slip or omission in any award it/he issues”.

4. Clerical error can be defined as an error in a document which can only be explained by considering it to be a slip or mistake of the party preparing or copying it. Literally an error is said to be “clerical” where it is made by a clerk or some subordinate agent, but actually, it means an error committed in the performance of clerical work, whether by the Court, the draftsman of the Act or by the clerk. It is an error which cannot reasonably be attributed to the exercise of judicial consideration or discretion. Clerical error is in the nature of an inadvertent omission or mistake. The term “clerical error” which is amendable *nunc pro tunc* is distinguishable from a “judicial error” which can be corrected only on review or an appeal. Reference can be made to precedents in *Rosamma Punnose* (AIR 1958 Ker. 154) and *Mansha Ram L. Jagdish Rai* (AIR 1962 Punj. 110).

5. Accidental slip occurs when something is wrongly put in by an accident and an accidental omission occurs when something is left out by accident. The expression “accidental slip” as occurring in section 152 (new) of the Code of Civil Procedure was construed by the Federal Court in *Sachindara Nath Kolya* (5 DLR 68), wherein it was observed as follows:

“It needs to be stressed that the keyword in the relevant phrase is “accidental” and it qualifies “omission” also, with the result that the procedure provided by section cannot be used to correct omission, however erroneous, which are intentional, not indeed in the sense of conscious choice, for no court, is supposed to commit an error knowing it to be such, but in the sense that the Court meant not to omit what was omitted”.

6. Apex Court in *Tulsipur Sugar Company Ltd.* [1969 (2) SCC 100] had occasion to consider correctional jurisdiction of the Labour Court constituted under the UP Industrial Disputes Act, 1947. In that precedent the Apex Court made reference to the provisions of Section 152 of the Code of Civil Procedure and rule 28 of the Rules and announced that power of correction of error is a limited one, which can be exercised only to cases where mistake, clerical or arithmetical or an error arising from an accidental slip or omission had occurred. It was ruled therein that this power is limited only to cases where clerical or arithmetical

mistake or errors arising from an accidental slip or omission have occurred.

7. After ascertaining the scope of powers of correction of errors available to this Tribunal, now it would be addressed as to whether mention of General Manager, Bank of Baroda, Zonal Office, Parliament Street, New Delhi-110001 in the award was on account of conscious choice of the Tribunal. Answer lies in negative. It was recorded on account of accidental mistake. This Tribunal has power to correct the accidental mistake. Accordingly, it is ordered that address of the management, recorded as General Manager, Bank of Baroda, Zonal Office, Parliament Street, New Delhi-110001, in the award may be read as General Manager, Mother Dairy, Patparganj, New Delhi, where ever it occurs. Ordered accordingly. The appropriate Government may be communicated of correction, so made in the award, for publication.

Dated: 10-09-2012

Dr. R. K. YADAV, Presiding Officer

ANNEXURE

**BEFORE DR. R. K. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
NO.1, KARKARDOOMA COURTS COMPLEX, DELHI**

I.D. No. 58/2011

Shri Dalip Singh,
H. No. 4/194, Lalita Park,
Laxmi Nagar,
Delhi-110092.

...Claimant

Versus

The General Manager,
Bank of Baroda, Zonal Office,
Parliament Street,
New Delhi-110001

...Management

AWARD

Under an Apprenticeship Agreement Dalip Singh was taken as an apprentice by the Mother Dairy (hereinafter referred to as the Dairy) from 28-3-1995 to 27-3-1996, under the provisions of Apprentices Act, 1961. Subsequently offer for imparting training was given to Dalip Singh and in consonance with that offer he joined as trainee with Dairy on 8-4-1996, for a period of two years. During the course of his training, he had to undergo heart surgery. After recovery he joined his training on 11th December, 1997. He could not continue with his training and was sent to Computer Branch for work. Dalip Singh alleged that on 6-1-1998 he was not allowed to resume his duties. On the other hand, the Dairy projects that since he was unable to do strenuous job, he abandoned his training. On 10-3-1999 Dalip Singh served a notice of demand on

the Dairy through the Conciliation Officer seeking his re-instatement as a trainee with continuity and full back wages. His demand was not conceded to. He raised an industrial dispute. Conciliation proceedings ended into a failure. On consideration of failure report the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No. L-42011/41/2000-IR(DU), New Delhi, dated 28th September, 2000, with following terms:—

“Whether the action of the General Manager, Mother Dairy, Patparganj, Delhi, in stopping from service all of a sudden to Sh. Dalip Singh, ex-trainee (Welder) with effect from 8-1-1998 is justified, reasonable, legal and valid? If not, to what relief the workman is entitled?”

2. Claim statement was filed by Shri Dalip Singh pleading therein that he completed education for Welder Trade from ITI, Vivek Vihar, Delhi in July, 1991. He was selected for apprenticeship in the trade of welder in Mother Dairy on 29-3-1998. He was sent to undergo medical examination by the Dairy. On being found medically fit he was taken as an apprentice. He completed his apprenticeship on 28-3-1996. Vide letter dated 28-3-1996, the Mother Dairy informed him that he was selected as a trainee. He was sent for medical check up to Ghaziabad where he was declared medically fit. He was taken in employment by the Mother Dairy on 8-4-1996. He was periodically examined at ESI Hospital, Mayur Vihar, as per directions of the Dairy. He suffered from Jaundice and took treatment for the ailment from ESI Hospital, Jhilmil, Shahdara. He was referred to G.B. Pant Hospital where he was operated for his heart ailment. He was discharged from the hospital on 2-10-1997. On being declared fit, he went to the Dairy on 16-11-1997 to resume his duties. He was advised by the Manager (Personnel) to take rest. When he was issued fitness certificate he resumed his duties on 11th December, 1997.

3. On 17th November, 1997 a letter was served upon him, informing him that “Kaizen Award” would be given to him for commendable contribution in his work area. Though his work was commendable, yet on 9-1-1998 he was stopped at the outer gate of the Dairy. He was not permitted to enter inside the dairy premises to join his duties. He was not permitted to see the General Manager, Mother Dairy. He sent two letters to the General Manager requesting him to allow him to resume duties but to no avail. He approached the Hotel Workers Union and the Secretary of that union raised an industrial dispute. He claimed that action of the Dairy is violative of the provisions of the Industrial Disputes Act and cannot stand. He seeks his re-instatement as a trainee with continuity and full back wages.

4. The claim was resisted by the Dairy pleading that Shri Dalip Singh was taken as an apprentice (Welder) for a fixed period of one year under the provisions of the

Apprentices Act, 1961. Being an apprentice he was not a workman within the meaning of Industrial Disputes Act, 1947 (in short the Act). After completion of his apprenticeship, Dalip Singh was taken as a trainee (Welder) for a specific period of two years vide offer for imparting training dated 4-4-1994. Dalip Singh joined as a trainee (Welder) on 8-4-1996. His training period was up to 7-4-1998.

5. The Dairy pleads that Shri Dalip Singh was operated upon for his heart ailment in G.B. Pant Hospital, New Delhi, and his heart valve was replaced. Owing to his operation, he became incapable of undergoing requisite period of training in Welder Trade, which involved strenuous nature of work. Consequently he stopped coming to the Dairy for his training on his own accord. One of the term of offer for imparting training provides that on completion of his training Dalip Singh will immediately and automatically cease to be a trainee and no separate notice was required to be served in that regard. The Dairy has not given any guarantee for employment to Dalip Singh on completion of full period of training. Since his training in welder trade was for a fixed and specified period no notice or retrenchment benefits were required to be given to him, in terms of the provisions of the Act. His period of training ended on 7-4-1998. His case is squarely covered under the provisions of Section 2(oo)(bb) of the Act. The Dairy further pleaded that without prejudice to the above facts absorption of Shri Dalip Singh was subject to completion of training period, depending upon availability of vacancy in the trade. Neither he completed training satisfactorily nor there was any vacancy in the trade of welder. It has further been pleaded that Shri Dalip Singh was required to produce a medical fitness certificate from Civil Surgeon/Medical Superintendent at the time of his joining training. He produced a certificate issued by Civil Surgeon, Ghaziabad. He was not required to get himself periodically examined in ESI Hospital. Dalip Singh produced medical fitness certificate dated 3-10-1997 issued by G.B. Pant Hospital along with his letter dated 23-1-1998. It is not disputed that “Kaizen Award” was given to the claimant. The Dairy pleads that “Kaizen” was done by a team of four persons, headed by Shri K. S. Chauhan. “Kaizen” was with regard to rectification of driver’s seat of the milk tanker. Individual letters were issued to all members of the team and awards were given to them. “Kaizen” award has nothing to do with his training as a welder. During the training Shri Dalip Singh was getting stipend. The Dairy projects that case of Dalip Singh does not fall within the ambit of ‘retrenchment’ as defined under the Act. On the other hand no batch mate of Dalip Singh for welder trade has been absorbed in Dairy. It has been claimed that claim presented by Dalip Singh deserves dismissal, being devoid of merits.

6. In rejoinder claimant reiterated facts pleaded in the claim statement. However, he presents therein that

letter dated 23-1-1998 was submitted by him on an advice of the Manager, so that he may continue with the training.

7. On pleadings of the parties following issues were framed by my learned predecessor:

1. Whether the workman/ex-trainee did not complete requisite period of training and abandoned the training in mid way? If so, its effect?
2. Whether Shri Dalip Singh workman/welder is covered under the provisions of Section 2(oo)(bb) of Industrial Disputes Act? If so, its effect?
3. Whether the action of the General Manager, Mother Dairy, Patparganj in stopping Dalip Singh ex-trainee welder with effect from 8-1-1998 from service all of a sudden is justified, reasonable, legal and valid? If not, to what relief is the workman entitled?

8. Claimant has examined himself in support of his claim. Shri R. T. Wadhwa, Senior Officer (HR), entered the witness box on behalf of the Dairy. No other witness was examined by either of the parties.

9. Vide order No. Z-22019/6/2007-IR(C-II), New Delhi, dated 11-2-2008 the case was transferred by the appropriate Government to Central Government Industrial Tribunal-II, New Delhi, for adjudication. Vide order No. Z-22019/6/2007-IR(C-II), New Delhi, dated 30-3-2011, the case was re-transferred to this Tribunal by the appropriate Government for adjudication.

10. Arguments were heard at the bar, Shri I. A. Rehmani, authorized representative, advanced arguments on behalf of the claimant. Ms. Raavi Birbal, authorized representative, presented facts on behalf of the Dairy. I have given my careful consideration to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

ISSUE NO. 1

11. In his affidavit Ex. WW-1/1, tendered as evidence, the claimant swears that he was selected for apprenticeship in welder trade on 29-3-1997 by the Dairy. He completed apprenticeship on 28-3-1996. Apprentice certificate was issued in his favour on 28-3-1996 which is Ex. WW-1/A. Vide letter dated 8-4-1996 the Dairy appointed him for a period of two years on monthly salary of Rs. 1750 for the first year and Rs. 1850 per month for the next year. He joined his duties with the Dairy on 8-4-1996. His appointment letter is Ex-WW-1/D. He suffered from Jaundice and got treatment at ESI Hospital, Jhilmil Colony, Delhi. He was referred to GB Pant Hospital where he remained admitted from 4-8-1997 to 15-8-1997. During his examination doctor detected that he was having problem in his heart. He was again admitted in GB Pant Hospital on

11-6-1997 and on 24-9-1997 heart surgery was performed. He was discharged from the hospital on 2-10-1997. He was declared fit to resume his duties on 16-11-1997 vide medical fitness certificate Ex. WW-1/E. He joined his duties on 16-11-1997. He was advised by the Manager (Personnel) to take further bed rest. As such he did not join his duties. He was declared fit vide certificate dated 10-12-1997 to resume his duties and as such he resumed his duties on 11-12-1997.

12. "Kaizen Award" was given to him on 4-12-1997 and letter dated 17-11-1997 was written by the Dairy in that regard. Though he was doing his duties with utmost sincerity and honesty yet Transport Manager was harassing him. He was taking more work than his capacity. On 8-1-1998 he was stopped outside gate of the Dairy and not permitted even to meet the General Manager. He wrote letters to the General Manager but needful was not done. Copies of letters written to General Manager are Ex. WW-1/H and WW1/1. During the course of his cross-examination he concedes that he was taken as a trainee for specified period of 2 years w.e.f. 8-4-1996. He further concedes that on account of the fact that he suffered heart problem and was operated upon on 24-9-1997, he could not complete his training. He does not dispute that during the period of training he was given stipend. He further concedes that he submitted medical fitness certificate issued by G.B. Pant Hospital along with his letter dated 9-1-1998. He nowhere disputes that he was issued attendance punching card, which card remained in his possession.

13. Shri R.T. Wadhwa, Senior Officer (HR), swears in his affidavit Ex. MW-1/A, tendered as evidence, that Shri Dalip Singh was taken as trainee for a period of 2 years vide offer for imparting training dated 4-11-1996. His training started from 8-4-1996. There was no provision for renewal of contract with Shri Dalip Singh. He was operated upon in G.B. Pant Hospital, New Delhi, in September, 1997 for his heart ailment and valve of his heart was replaced. Due to his operation he became incapable of undergoing requisite period of training in Welder Trade, since it involved strenuous nature of work. Therefore, at his own accord Dilip Singh stopped coming to the Dairy for training. No trainee in Welder Trade has been absorbed against any vacancy in the Dairy.

14. Out of facts unfolded by the claimant and Shri Wadhwa it came to light that initially the claimant joined as apprentice with the Dairy under the Apprentice Act 1961. He completed apprentice training and certificate Ex. WW-1/A was issued in his favour by the Dairy. This certificate makes it clear that the claimant joined as an apprentice with the Dairy on 28-3-1995 under Apprentice Act 1961. Vide letter Ex. WW1/D the claimant was given an offer for imparting training for a period of 2 years. Ex. WW-1/M2 contains the terms on which the said offer for

imparting training was given to the claimant. Clause (iii) of the said letter makes it clear that performance of the trainee must be to the entire satisfaction of the Dairy, failing which training was to be discontinued without any notice and without assigning any reason to the trainee. It was further provided in clause (v) that on completion of the period of training immediately and automatically Shri Dalip Singh was to cease to be trainee and no separate notice was required to be served upon him. It would be in the fitness of things to reproduce the said clauses, which are extracted thus:—

"(iii) your performance during the period of training must be to our entire satisfaction failing which your training will discontinue without any notice and without assigning any reason whatsoever, and the decision of the Dairy shall be final in this matter. You are required to give one month notice in writing or pay one month's stipend in lieu thereof if you decide to discontinue with your training in the Dairy".

"(v) On completion of full period of your training you will immediately and automatically cease to be the trainee and no separate notice will be served upon you by this Dairy in this regard. This Dairy also does not undertake to guarantee employment to you on completion of your full period of training."

15. As projected above performance of the trainee was to remain to entire satisfaction of the Dairy failing which training could be dis-continued without any notice and decision of the Dairy in that regard was to be taken as final. On the other hand the trainee was given an option to give one months notice in writing or one month's stipend in lieu thereof in case he decides to dis-continue with the training in the Dairy. The stipulation contained in Ex. WW1/D makes it clear that training period can be determined by either side. In case the Dairy takes a decision to determine the period of training, it can do so when performance of the trainee is not found to the entire satisfaction of the Dairy. In such a situation the Dairy retains a right to discontinue training without any notice or without assigning reason whatsoever in that regard. When the trainee takes a decision to discontinue with the training he was under an obligation to serve one month's notice in writing or to pay one month's stipend in lieu thereof.

16. Fractural matrix is to be considered in order to adjudicate as to whether clause (iii) of Ex. WW1/M2 ever came into operation. It is not a matter of dispute that the claimant was admitted in G.B. Pant Hospital where he was operated upon and valve of his heart was replaced. The claimant remained on medical leave and resumed his duties on 11th December, 1997. According to the claimant, he wrote letter dated 23-1-1998 to the General Manager. Writing of this letter is not a matter of dispute since the Dairy projects that along with this letter the claimant submitted his fitness certificate. Since letter dated

23-1-1998 is not disputed the Tribunal can read it in evidence. When contents of letter dated 23-1-1998 are perused it emerges over the record that the claimant presents that he joined his duties on 11th December, 1997. He was sent to Computer Branch for lighter job. He details that he served in Computer Branch upto 6-1-1998. Thereafter, Manager (Transport) told him not to report for duties. Contents of the letter make it clear that the claimant requested that he should be taken on training for a lighter job. It is an admitted case of the parties that Shri Dalip Singh was given an offer for imparting training in welder trade. Admittedly welder trade requires strenuous work. Claimant projects in his letter dated 23-1-1998 that he can perform some lighter job. than strenuous work involved in welder trade. It is apparent, out of the contents of the above letter, that he never wanted to resume his duties in welder trade. Therefore, it is emerging over the record that the claimant opted to dis-continue with his training. However, he had not given one month's notice in writing or one month's stipend in lieu of notice. When claimant made his intention known to dis-continue with the training, it was incumbent upon him to give one month's stipend in lieu of notice. However, the Dairy had not insisted for payment of one month's stipend in lieu of notice. Consequently it is emerging over the record that on the strength of this letter dated 23-1-1998 the claimant made the authorities known that he wants to dis-continue his training in welder trade. I have no hesitation in concluding that it was the claimant who dis-continued his training. The issue is, therefore, answered in favour of the Dairy and against the claimant.

ISSUE NO. 2:

17. Admittedly the claimant was taken as an apprentice by the Dairy on 28-3-1995 under Apprenticeship Act, 1961. On completion of his apprenticeship he was given an offer for imparting training in welder trade for a period of two years vide letter dated 4-4-1996. He joined training on 8-4-1996. Questions for consideration comes as to whether the claimant is a workman? For an answer definition of terms "workman" is to be considered. The term has been defined by the Act, which definition is extracted thus:

"(s) Workman means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a prison, or
- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him functions mainly of a managerial nature.

18. As provisions of clause (s) of Section 2 of the Act highlight, an apprentice has specifically been included in the definition of "workman" but provisions of the Apprentices Act defines the term "apprentice" to mean "a person who is undergoing apprenticeship training in a designated trade in pursuance of a contract of apprenticeship". Section 18 of the Apprentices Act provides that an apprentice shall be a trainee and not workmen. It has further been stipulated therein that the provisions of any law with respect to labour shall not apply to or in relation to such apprentice. For sake of convenience provisions of Section 18 of Apprentices Act are extracted thus:—

"18. Apprentice are trainees and not workers—save as otherwise provided in this Act,—

- (a) Every apprentice undergoing apprenticeship training in a designated trade in an establishment shall be trainee and not a worker, and
- (b) The provision of any law with respect to labour shall not apply to or in relation to such apprentice".

19. It is relevant to note that the word "apprentice" as defined in clause (aa) of Section 2 of the Apprentices Act makes it clear that an apprentice shall only be a trainee and not a "worker" and the provision of "any law with respect to labour" shall not apply to or in relation to him. Employees under various labour laws have been defined by different expressions. For instance, in the Factories Act 1948, the expression "workers" has been used, in the Employees State Insurance Act, 1948 the expression "employee" has been used while in Section 2 (s) of the Act, the expression "workman" has been used which means "any person including an apprentice" employed in any industry

20. The Apex Court in Employees State Insurance Corporation [1976 (1) LLJ-81] considered the scheme of Apprentices Act 1961 particularly the definition of "apprentice" in Section 2 (aa) and provisions of Section 18 of that Act and the definition of "employee" in Section 2(9) of the Employees State Insurance Act 1948 and ruled

that an “apprentice” is not “employee” as defined in the Employees State Insurance Act. The Court made a significant observation that if the legislature intended to enlarge the definition of word “employee” in section 2(9) of the Employees State Insurance Act; it could have included word “apprentice” in it, as has been done in section 2(s) of the Act. Such a deliberate omission, on the part of the legislature, can be attributed only to the well known concept of “apprenticeship” which the legislature assumed and took note of for the purpose of the Act. That is not to say if the legislature intended, it could not have enlarged the definition of word “employee” even to include “apprentice”, but the legislature did not choose to do so.

21. In Hanuman Parsad Choudhary (1986 Lab IC 1014) the Rajasthan High Court was confronted with the proposition as to whether an “apprentice” as defined in Section 2(aa) and the provision of Section 18 of the Apprentices Act will not be “workman” as defined in Section 2(s) of the Act, despite having specifically been included in the definition. The Court pointed out that the Apex Court in Employees State Insurance Corporation (supra) had not considered the definition of “workman” in Section 2 (s) of the Act in conjunction with the provision of Section 18 of the Apprentices Act, since the Court was primarily concerned with the question as to whether an apprentice could be regarded as an employee under Section 2 (9) of the Employees State Insurance Act, 1948. The High Court ruled that the said decision cannot be read as laying down that in spite of the provisions of Section 18 of the Apprentices Act, an “apprentice” governed by the Apprentices Act is to be treated as a “workman” under Section 2(s) of the Act. The High Court, therefore, held that an apprentice governed by the Apprentices Act is not workmen for the purpose of the Act and the provision of the Act would not be applicable to him.

22. A contract of apprenticeship under the provision of Apprentices Act, is required to be registered. Section 4 of the Apprentices Act contemplates existence of a concluded contract of apprenticeship which is required to be sent for registration. For sake of convenience provisions of Section 4 of the Apprentices Act, are extracted thus:—

“4. Contract to apprenticeship—

- (1) No person shall be engaged as an apprentice to undergo apprenticeship training in a designated trade unless such person or, if he is minor, his guardian has entered into a contract of apprenticeship with the employer.
- (2) The apprenticeship training shall be deemed to have commenced on the date on which the contract of apprenticeship has been entered into under sub-section (1).
- (3) Every contract of apprenticeship may contain such terms and conditions as may be agreed to by the parties to the contract:
Provided that no such term or condition shall be inconsistent with any provision of this Act or any rule made there under.
- (4) Every contract of apprenticeship entered into under sub-section (1) shall be sent by the employer with in such period as may be prescribed to the Apprenticeship Adviser for registration.
- (5) The Apprenticeship Adviser shall not register a contract of apprenticeship unless he is satisfied that the person described as an apprentice in the contract is qualified under this Act for being engaged as an apprentice to undergo apprenticeship training in the designated trade specified in the contract.
- (6) Where the Central Government, after consulting the Central Apprenticeship Council, makes any rule varying the terms and conditions of apprenticeship training of any category of apprentices undergoing such training, then, the terms and conditions of every contract of apprenticeship relating to that category of apprentices and subsisting immediately before the making of such rule shall be deemed to have been modified accordingly”.

23. As emerged out of the provision Section 4 of the Apprentices Act, as apprenticeship contract is required to be registered to become a contract of apprenticeship, as contemplated by sub Section (4) of the said section. An apprenticeship contract, under the provision of Apprentices Act, shall exclude applicability of any provision of any law with respect to labour to an apprentice. A person who has been engaged as an apprentice shall be a trainee and not a workman. Consequently an apprentice under the Apprentices Act shall not fall within the ambit of definition of “workman” as contained in Section 2(s) of the Act. However an apprentice, whose case does not fall within the ambit of the provisions of the Apprentices Act, shall be a workman within the meaning of Section 2(s) of the Act.

24. The claimant was taken as a trainee with effect from 8.4.1996 for a specified period of two years. This traineeship was not registered under the Apprentices Act, 1961. Therefore, it cannot be said that the claimant was a trainee under the Apprentices Act and was not clothed with the status of a workman, as defined by clause(s) of Section 2 of the Act. Consequently, it is concluded that the claimant was a workman when he joined as trainee with the Dairy with effect from 8-4-1996. Now not question, which is to be addressed, is as to whether services of the claimant were retrenched by the Dairy? Retrenchment has been defined in clause (oo) of Section 2 of the Act, which definition is reproduced thus:

"(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include—

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the service of the workman as a result of the non renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under the stipulation in that behalf contained therein; or
- (c) termination of the service of a workman on the ground of continued ill-health,"

25. As referred above, definition of word "retrenchment" consists of following four requirements:—

- (a) Termination of services of workman
- (b) By the employer
- (c) For any reason whatsoever, and
- (d) Otherwise than as a punishment inflicted by way of disciplinary action.

26. As projected above termination of services of workman by an employer for any reason whatsoever otherwise than a punishment inflicted by way of disciplinary action would answer the definition of term "retrenchment". In second limb a few exceptions are provided, which would not fall within the ambit of definition of "retrenchment". Therefore, it is evident that to answer definition of term "retrenchment", there should be an act of termination of service of a workman on the part of employer. If there is no act on the part of an employer then it would not answer the definition of "retrenchment". As projected above, the claimant made it clear that he was unable to continue with the training, which involved strenuous work. For a certain period he worked in the Computer Branch, though he was a trainee in welder trade. When he was given work in Computer Branch, he requested the authorities to take him on training for some lighter job. He never wanted to continue with his training. Thus it is apparent that the claimant dis-continued training himself. Circumstances surrounding the controversy project that it was the claimant who dis-continued training in welder trade.

27. Whether the fact that the claimant was permitted to work in Computer Branch for a certain period would

show that a new agreement of employment was entered into between the parties. When claimant was assigned work in Computer Branch, at that juncture intention of the parties to abandon or dis-continue the earlier agreement emerges over the record. Can it be inferred that the Dairy engaged him afresh in computer branch. For an answer to this proposition, it is to be appreciated as to how a contract of service is entered into. The relationship of employer and employee is constituted by a contract, express or implied between employer and employee. A contract of service is one in which a person undertakes to serve another and to obey his reasonable orders within the scope of the duty undertaken. A contract of employment may be inferred from the conduct which goes to show that such a contract was intended although never expressed and when there has, in fact, been employment of the kind usually performed by the employees. Any such inference, however, is open to rebuttal as by showing that the relation between the parties concerned was on a charitable footing or the parties were relations or partners or were directors of a limited company which employed no staff. While the employee, at the time, when his services were engaged, need not have known the identity of his employer, there must have been some act or contract by which the parties recognized one another as master or servant.

28. Engagement of the claimant in Computer Branch was not in consonance with the terms contained in offer for importing training, which is dated 4.4.1996. As detailed above, the Dairy had not undertaken any guarantee to employ the claimant after completion of his training. However, when claimant joined the Dairy after his operation, he was engaged in computer branch with effect from 11-12-1997, as projected in letter 23-1-1998. The claimant worked in the Computer Branch upto 6-1-1998 only. Consequently it is evident that it was his fresh engagement. The claimant had not rendered continuous service of a year, in computer branch. When claimant had not rendered continuous service of more than 240 days, provisions of Section 25F of the Act does not come into operation. In view of these reasons it is clear that the services of the claimant were dispensed with, but his new engagement in Computer Branch did not last for a period of 240 days. Though termination of the claimant from services, after his new engagement in Computer Branch, answers the definition of "retrenchment", provided in clause (oo) of Section 2 of the Act, yet procedure for retrenchment provided in Section 25F was not required to be followed. Issue is, therefore, answered in favour of the Dairy and against the claimant.

ISSUE NO. 3:

29. Termination of services of the claimant from Computer Branch of the dairy on 8-1-1998 amounts to retrenchment. However, the claimant has not been able to show that any person junior to him was retained in service

and he was made to go. Therefore, it is crystal clear that neither the provisions of Section 25F nor 25G of the Act came into play. All these reasons persuade me to conclude that act of the Dairy in terminating the services of the claimant on 8-1-1998 from its Computer Branch was legal and valid.

30. For consideration of aspects of social justice, the Tribunal has to keep in mind that the Act is a beneficiary legislation calculated to ensure social justice to both employers and employees and advance progress of industry by bringing harmony and cordial relationship between the parties. The Act empowers adjudicating authorities to abrogate conditions in contract of employment, in the interest of social justice. Social and economic justice is ultimate ideal of industrial adjudication. Social and economic justice has been given place of pride in our Constitution and doctrine of absolute freedom of contract has thus to yield to the higher claims for social justice. See Raibahadur Deewan Badri Das [1962 (II) LLI 366].

31. Social justice is not based on contractual relations and is not to be enforced on principles of contract of service. It is something outside these principles and invoked to do justice without a contract to back out. Reference can be made to precedent in *Rashtriya Mill Mazdoor Sangh* [1960 (II) LLI 263]. In *J.K. Cotton Spinning & Weaving Mills Company Ltd.* [1963 (II) LLI 435] the Apex Court ruled that industrial disputes are to be adjudicated laced with the concept of social justice. It would be expedient to reproduce the observations made by the Apex Court which are extracted thus:

"In our opinion the argument that the considerations of social justice are irrelevant and untenable in dealing with industrial disputes, has to be rejected without any hesitation. The development of industrial law during the last decade and several decisions of this court in dealing with industrial matters have emphasised the relevance, validity and significance of doctrine of social justice..... Indeed the concept of social justice has now become such an integral part of industrial law that it would be idle for any party to suggest that industrial adjudication can or should ignore the claim of social justice in dealing with industrial disputes. The concept of social justice is not narrow or one sided, or pedantic, and is not confined to industrial adjudication alone. Its sweep is comprehensive. It is founded on the basic idea of socio economic equality and its aim is to assist the removal of socio economic disparities and inequalities".

32. In *Ahmedabad Manufacturing and Calico Printing Company Ltd.* [1972 (II) LLJ 165] the above principles were reiterated by the Apex Court. Therefore, the law laid down by Apex Court makes it clear that the

industrial adjudication cannot and should not ignore the claims of social justice. Same views were expressed in *Basti Sagar Mills Company Ltd.* [1978 (II) LLJ 412]. Therefore this Tribunal has to consider the case on the touch stone of social justice also.

33. As detailed above the claimant was taken as a trainee welder on 8-4-1996 for a specified period of 2 years. He was to be paid stipend at the rate of Rs. 1750 p.m. in the first year and at the rate of Rs. 1850.00 for the second year. Ex. WW/M2 makes it explicit that on completion of full period of training the claimant was to cease as a trainee immediately and automatically and no separate notice was to be served by the Dairy in that regard. The Dairy made it abundantly clear that it does not undertake to guarantee employment to the claimant on completion of full period of training. It is crystal clear that the parties were well aware that on completion of the training, the claimant was not to be offered any job by the Dairy. Requirement of service of notice was also dispensed with by the parties and status of claimant as a trainee was to come to an end immediately and automatically on completion of full period of training. As referred above the claimant failed to complete his training. On compassionate ground he was offered job in Computer Branch from 11-12-1997 to 6-1-1998. This compassionate appointment, which was for a very short period, does not constrain the Dairy to continue with his employment.

34. Admittedly the claimant underwent operation for replacement of heart valve, during the period of his training. Training in welder trade has not led the claimant to this ailment. Replacement of his heart valve was not a consequence of strenuous duties performed during training. Hence, an ordinary prudent man will not say that ailment with which the claimant suffered was a result of his training exercise. Since the parties had clearly well defined the parameter in Ex. WW-1/M2, wherein no obligation was imposed on the Dairy to offer him with a job on completion of training, it cannot be said that the Dairy was supposed to offer a compassionate appointment to the claimant on a lighter job. All these aspects make me to comment that even on consideration of standards of social justice it cannot be said that the Dairy is under an obligation to give an employment to the claimant in some other discipline than one in which he was undergoing training. Action of the Dairy is, accordingly, found to be reasonable and justifiable. No case is there which may persuade this Tribunal to command the Dairy to offer a job on compassionate ground to the claimant. I find no merit in his claim statement. Accordingly claim statement put forward by Shri Dalip Singh is brushed aside. An Award is passed in favour of the Dairy and against the claimant. It be sent to the appropriate Government for publication.

Dated: 20-7-2012

Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 24 सितम्बर, 2012

का.आ. 3195.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पूर्वोत्तर रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लखनऊ के पंचाट (संदर्भ संख्या 11/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-09-2012 को प्राप्त हुआ था।

[सं. एल-41012/38/2009-आई आर(बी-1)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 24th September, 2012

S.O. 3195.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 11/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Purvottar Railway and their workmen, received by the Central Government on 24-09-2012.

[No. L-41012/38/2009-IR(B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT

Dr. MANJUNIGAM, PRESIDING OFFICER

I.D. No. 11/2011

Ref. No. L-41012/38/2009-IR(B-I) dated: 01-02-2011

BETWEEN

Shri Wilson Soni S/o Late Suny Mehtab
C/o Sh. Parvez Alam, Shram Kanon Salahkaar
283/63 Kh, Garhi Kannora
Lucknow-16

AND

Varisth Mandal Karmik Adhikari
Purvottar Railway, Ashok Marg,
Lucknow

AWARD

1. By order No. L-41012/38/2009-IR(B-I) dated: 01-02-2011 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Shri Wilson Soni

S/o Late Suny Mehtab, C/o Sh. Parvez Alam, Shram Kanon Salahkaar, 283/63 Kh, Garhi Kannora, Lucknow and Varisth Mandal Karmik Adhikari, Purvottar Railway, Ashok Marg, Lucknow or adjudication.

2. The reference under adjudication is:

“Whether the Action of the Management of North-Eastern Railway, Lucknow in not taking Shri Wilson Soni in panel of 1983-84 above his junior and in not granting him benefits of ACP is legal and justified? to what relief the workman is entitled?”

3. The case of the workman, Wilson Soni, in brief, is that he was appointed as casual labour on 15-08-75 and got temporary status on completion of 120 days as per Rule 2211 of Chapter XXV and Rule 2304 of Chapter XXIII. It has been alleged by the workman that on getting temporary status he is entitled for getting all benefits available to regular employees; but he was not given pension, DCRG, leave encashment, insurance and provident fund etc. consequent to superannuation on 30-09-2009. Moreover, he had not been included in the panel of year 1983-84 above juniors nor was given benefits of ACP, which was ought to be given to the workman under Rules. Accordingly, the workman has prayed that he be included in the panel of the year 1983-84 along with the benefits of ACP and retrial benefits.

4. The management of the railways has disputed the claim of the workman by filing written statement; wherein it has submitted that the workman was a temporary status employee and was not a regular railway employee. He retired on 30-09-1999. It has been submitted by the management that the workman was screened vide screening test dated 11-02-2005, therefore, demand to include him in the panel for the year 1983-84 is unjustified. It has further submitted that the workman retired on the post of Substitute Khalasi/casual labour and accordingly, not entitled for pensionary benefits as per Para 31 and 32 of the Railway Services Pension Rule, 1993. Likewise no GIS deduction was made from his salary hence no provident fund was paid to him; and no leave encashment was made due to zero balance in his leave account. However, the workman has been paid Rs. 36,520 on 30-09-99. Accordingly, the management has prayed that the claim of the workman be rejected without any relief to him.

5. After filing the written statement by the management on 09-12-2011 the workman was directed to file its rejoinder by 06-01-2012; but workman failed to file any rejoinder even on the successive dates. On 03-03-2012, the authorized representative of the workman informed the Tribunal that the workman has since died on 24-06-2011 and made an endorsement to the effect on the margin of the order sheet; accordingly, 04-07-2012 was

fixed for further order. On 04-07-2012 and subsequent date i.e. 30-08-2012 none appeared from the workman nor any information has been furnished to this Tribunal that any substitution application on behalf of the legal heirs of the workman is pending before the Central Government.

6. In the facts and circumstances stated hereinabove, it is very much clear that the workman had died on 24-06-2011 since then no substitution application was filed by his legal heirs till date, which clearly indicates that either there is no one to press the case or no one is interested to peruse the case; hence, there is no justification to lingering the case any more; accordingly, no claim award is given.

7. The reference under adjudication is answered accordingly.

Lucknow : Dr. MANJU NIGAM, Presiding Officer
03-09-2012

नई दिल्ली, 24 सितम्बर, 2012

का.आ. 3196.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पूर्वोत्तर रेलवे के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 111/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-09-2012 को प्राप्त हुआ था।

[सं. एल-41011/34/2011-आई आर(बी-1)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 24th September, 2012

S.O. 3196.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 111/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Purvottar Railway and their workmen, received by the Central Government on 24-09-2012.

[No. L-41011/34/2011-IR(B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, LUCKNOW

PRESENT

Dr. MANJU NIGAM, Presiding Officer

I.D. No. 111/2011

Ref. No. L-41011/34/2011-IR(B-I) dated: 28-7-2011

BETWEEN

Mandal Sangthan Mantri,
Purvottar Railway Mazdoor Union
96/196 Purana Ganesh Ganj

Lucknow

AND

1. The Divisional Railway Manager
Purvottar Railway, Ashok Marg,
Lucknow
2. Sr. Divisional Mechanical Engineer
Purvottar Railway, DRM Officer,
Ashok Marg, Lucknow

AWARD

1. By order No. L-41011/34/2011-IR(B-I) dated 28-07-2011 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Mandal Sangthan Mantri, Purvottar Railway Mazdoor Union, 96/196 Purana Ganesh Ganj, Lucknow (Espousing cause of Sri Munna S/o Sri Maiku) and the Divisional Railway Manager, Purvottar Railway, Ashok Marg, Lucknow and the Sr. Divisional Mechanical Engineer, Purvottar Railway, DRM Office, Lucknow Marg, Lucknow for adjudication.

2. The reference under adjudication is:

“Whether The Demand of the Union, Purvottar Railway Union for Quashing the Penalty Order Dated 12-2-2009 and 17-2-2009 Served on Sri Munna, Safaiwala, is legal and justified? to what relief the union/workman is entitled?”

3. The order of reference was endorsed to the Mandal Sangathan Mantri, Purvottar Railway Mazdoor Union, 96/196 Purana Ganesh Ganj, Lucknow with the direction to the party raising the dispute to file the statement of claim along with relevant documents, list of reliance and witnesses with the Tribunal within fifteen days of the receipt of the order of reference and also forward a copy of such a statement to each one of the opposite parties involved in this dispute under rule 10(B) of the Industrial Disputes (Central), Rules, 1957.

4. The order of reference was registered in the Tribunal on 16-08-2011 and notice was issued for filing statement of claim by the workman; but no statement of claim together with documents etc. was filed. However, one Sri P.K. Tewari appeared on 05-01-2012 and 25-05-2012 but neither filed any authority or claim statement. Moreover, adjournment dated 05-01-2012 and 25-05-2012

were moved seeking time to file claim statement. Since from the date of registration several dates were given to workman union but no one appeared on behalf of workman union nor was any claim statement filed.

5. In the above circumstances, it appears that the workman's union does not want to pursue its claim on the basis of which it has raised present industrial dispute; therefore, the present reference order is decided as if there is no grievance left with the workman. Resultantly no relief is required to be given to the workman concerned. The reference under adjudication is answered accordingly.

6. Award as above.

Lucknow: Dr. MANJU NIGAM, Presiding Officer
10-09-2012

नई दिल्ली, 24 सितम्बर, 2012

का.आ. 3197.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर-पूर्व रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 11/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-09-2012 को प्राप्त हुआ था।

[सं. एल-41012/85/2006-आई आर (बी-1)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 24th September, 2012

S.O. 3197.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 11/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of North Eastern Railway and their workmen, received by the Central Government on 24-09-2012.

[No. L-41012/85/2006-IR(B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, LUCKNOW

PRESENT

Dr. MANJU NIGAM
PRESIDING OFFICER
I.D. No. 11/2007

Ref. No. L-41012/85/2006-IR(B-1) dated: 07-02-2007

BETWEEN

The Member Executive, P.R.S.S., (BMS)
C/o D.P. Awasthi, 49, Tilak Nagar
Lucknow-226004 (U.P.)
(Espousing cause of Shri Lotan)

AND

1. The Divisional Railway Manager
North Eastern Railway
Ashok Marg, Lucknow.
2. The Assistant Divisional Engineer
North Eastern Railway
Ashok Marg, Lucknow.

AWARD

1. By order No. L-41012/85/2006-IR(B-I) dated: 07-02-2007 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the Member Executive, P.R.S.S., (BMS), C/o D.P. Awasthi, 49, Tilak Nagar, Lucknow (Espousing cause of Shri Lotan) and the Divisional Railway Manager, North Eastern Railway, Ashok Marg, Lucknow & the Assistant Divisional Engineer, North Eastern Railway, Ashok Marg, Lucknow for adjudication.

2. The reference under adjudication is:

“Kya Prabandhan, Poorvottar Railway, Lucknow Dwara Shri Lotan, Putra Swa. Mahavir, T.S. Lohar Se Dinank 16.05.1984 Ke Baad Lagataar Karya Liye Jaate Rahne Ke Baad Bhi Lohaar Ke Pad Par Niyamit Na Karna Naayochit Evam Vaidh Hai? Yadi Nahi, To Kaamgaar Kis Rahat ko Pane ka Haqdaar Hai?”

3. It is admitted case of the parties that the workman, Lotan was appointed as Casual Labour Black Smith on 16-05-1984 and after completion of 120 days' continuous, casual services, he was given temporary status in the grade of Rs. 260-400 (time scale) and he is working since then as such, till he superannuated. It is also admitted that; and he was assigned seniority against the post of substitute Black Smith *vide* letter dated 09-10-93 and was declared eligible in medical category A/3.

4. It has been alleged by the workman's union that though the workman was appointed on the post of Casual Labour Black Smith on 16-10-1972 and was given temporary status on 16-09-1984; but his services have not been regularized against said post even lapse of more than 25 years' continuous service as substitute Black Smith though he passed medical examination in A/3 category. It has further been alleged by the workman's union that the services of the workman has been regularized against the

post of gang man, which is a class IV post, though he was entitled to be regularized against the post of Black Smith, which is a class III post. Accordingly, the workman's union has prayed that the workman be ordered to be regularized against the post of Black Smith.

5. On the other hand the management of the Railways has denied the allegations of the workman's union and has submitted that workman has been screened and found fit for the post of Gangman *vide* their office order dated 10-12-97 and accordingly, regularized against said post. Regarding non-consideration of the workman against the post of Black Smith it has been submitted by the management that the said post of Black Smith falls in 'Artisan category', in which 50% of the posts (25% by ITI qualified & Act Apprentice + 25% High School Pass) are filled on direct recruitment basis and rest 50% is filled on the basis of option given, by the regular departmental Group IV artisan helper, in commercial examination; and since the workman did not bear educational qualification in this category, accordingly, there arise no question of absorbing the workman against the post of Black Smith which falls in 'Artisan category'. Accordingly, the management has prayed that the claim of the workman's union be rejected without any relief to the workman concerned.

6. The workman's union has filed its rejoinder wherein apart from reiterating the averments made by them in their statement of claim it has stated that other similarly situated workmen have been regularized in skilled grade, but not in Class IV posts.

7. The parties have filed documentary proof in support of their respective cases. The workman has examined himself whereas the management examined Shri Satish Chandra, PWS and Shri Imtiyaz Ashraf, Section Engineer in support of their respective stands. The parties availed opportunity to cross-examine the each other's witnesses apart from putting oral as well as written arguments.

8. Heard, representatives of the parties and perused entire evidence on records.

9. The authorized representative appearing the workman's union contended that the workman was re-engaged as casual labour Black Smith on 16-05-84 and after continuous working for 120 days he was given temporary status *w.e.f.* 16-09-84 in pay scale of Rs. 260-400 and has continuously rendered his services as Black Smith, which is a class III post, till he superannuated on 30-03-2009; but, his services has not been regularized against said post, in spite of Railway Board's instructions *vide* their letter dated 11-12-96. It has further contended that the railway administration has, illegally regularized the workman against the post of Gangman which a class IV post in spite of being declared medically fit for the

category A/3. The authorized representative of the union has argued that the workman has been working on the post of Black Smith since 16-05-84 and getting salary accordingly, therefore he is entitled for regularization from the said date or latest from 10-12-1997 and should be allowed pension, DCRG and other retrial benefits as admissible under existing Rules.

10. Per contra, the authorized representative of the management of the railways has submitted that the workman was screened and found fit for the post of Gangman; and accordingly, was posted against said post, but he did not join and continued to work as substitute Black Smith till he got superannuated. As regards regularizing the workman, in artisan category, it has been contended that in the artisan category, 50% of the vacancies pertain to the DR quota and rest 50% vacancies are filled on the basis of commercial examination, conducted on the basis of option given by the regular departmental class IV artisan helpers; since the workman did not full fill the required qualification in the said category *i.e.* DR quota, which required that candidate should either be ITI pass & Apprentice Act or High School pass he could not be absorbed against post of Black Smith.

11. I have given my thought full consideration to the rival contentions of the parties and gone through entire evidence relied by them in support of their case.

12. It is the case of the workman's union that the workman was given temporary status as casual Black Smith on 16-09-84 in time scale of Rs. 260-400; but could not be regularized against said post in spite of being declared fit in A/3 medical category, instead he had been regularized against the post of Gangman, which is a class IV post. The management on the other hand has denied the claim of the workman's union, submitting that the workman was granted temporary status as casual Black Smith and was posted as Gangman on being found fit for the said post in the screening test *vide* order dated 10-12-97. It is also the case of the management that the workman could not be absorbed against the post of Black Smith as it was a class III post and the same could have been filled in terms of prescribed Rules. Since the workman did not fulfil requisite norms, it was not possible to absorb the workman against the post of Black Smith.

13. The workman, in his cross-examination, has stated that he has no educational qualification; likewise he has not gone through any commercial course. He has also stated that he was appointed as casual Black Smith and continued to work as such till date. In rebuttal the management witness Shri Satish Chandra has stated that the workman was appointed as casual Black Smith and was given temporary status as class IV employee and he has further stated that temporary status is not given in class III. He has further stated that the workman was screened and posted against the post of Gangman, but he

did not join on the said post. He has also stated that since the workman did not bear required educational qualification, prescribed for artisan category, he could not be absorbed against the post of Black Smith. However, it was admitted by him that the workman continue to draw his salary, till date for class III. Another witness, Shri Imtiyaz Ashraf (MW-2), in his cross-examination, on being questioned by the A/R of the workman's union that as to why the workman was not regularized on the post of Black Smith when was successful in screening test on 10-12-97, answered that the said screening was for the post of Gangman, which was conducted by Assistant Engineer who is authorized for Gangman or Class IV. He has also admitted that the post of Black Smith is that of Class III and the workman, Lautan did the job of Lohaar (Black Smith) till the date of his retirement.

14. Thus, on the basis of the discussion made above, it is evident that the workman was appointed on 16-05-84 as casual labourer and later was made substitute casual Black Smith. Thereafter, on completion of 120 days' continuous working he was given temporary status under Rules, mandatory to be given to casual labourers engaged for carrying out works related to Class IV. Subsequently, the workman was screened by the Assistant Engineer *vide* their office order dated 10-12-97, paper No. C-12, and on being found fit, was posted against the vacant post of Gangman, a class IV post. But the workman did not join the said post of Gangman and continued to work as substitute casual Black Smith and drawn his salary etc. accordingly, till he retired on 30-04-2009. As far as the contention of the workman's union regarding not regularizing the workman on the post of Black Smith is concerned, the submission of the management, that the workman could not be regularized on the post of Black Smith as the said post falls in artisan category and the workman could not fulfill the educational qualification prescribed for the said post, appears to be irrelevant in view of the fact that the workman actually worked at the post of Black Smith, which is a class III post and drawn salary for the same post. This fact is also corroborated by the management witness, Shri Imtiyas Ashraf who stated that post of Black Smith is class III post and the workman, Lautan did the job of Black Smith till retirement. Another management witness, Shri Satish Chandra also stated that this is true that the salary, the workman received up till now is that of class III.

In practice, there are so many examples where work associated to the post of higher grade is being taken from a person getting salary of lower grade; but in this case, the workman was appointed on 16-05-84 as casual labourer and later was made substitute casual Black Smith and worked as such, subsequently, he was given temporary status as casual Black Smith on 16-09-84 in time scale of Rs. 260—400; but could not be regularized against said post; in spite of the fact that he has been getting salary for

the post on which he was working *i.e.* Black Smith. The management has contended that he has been screened and found fit for the post of Gangman and also that the workman did not joined the said post. But it could not apprise this court as to what action has been taken against the workman on not joining the post of Gangman; and why he has been allowed to continue to work as Black Smith and was being paid the salary accordingly? This puts the management on the back foot.

15. The workman was doing the work of Black Smith, which he continued to do till the date of retirement. This fact was admitted by the witnesses of the management. Not only he was doing the work of Black Smith but also he was given the salary for Black Smith, which is class III post and he continued to receive the salary for that post till the date of retirement. The contention of the management is that the workman neither possessed educational qualification nor passed any trade test, making him eligible for the post of Black Smith; but this admitted that he worked and was paid for the said post till the date of retirement. Keeping in view this fact, the contentions of the management are not reliable as when a person is performing duty on a post for a long span of time *i.e.* for more than 25 years then there lies nothing in the mouth of the management to say that he was not qualified for the post and the benefits attached to said post could not be denied for the reasons that he does not possess educational or technical qualification prescribed for the said post. If a person continuously performs a particular work for a long period of time of 25 years, even though he is literally unqualified for that post, without any complaints and objections, it may be safely concluded that the person is efficient and competent for to perform that particular work. Had there been any deficiency in the skill of the workman to perform the duties of the Black Smith, he might not have allowed to continue the job of Black Smith and also might not have paid. But when the management has taken the work from the workman on a particular post for quite a long period of time then coming forward with the plea that he is not educationally and technically qualified is nothing but to deprive him of the benefits attached to the post after retirement, in as much as the management has not given any explanation to the effect that why the work of Black Smith was taken from a person who was not qualified for the post and payment were also made to him. The fact that the workman had been working on the post of Black Smith for more than 25 years and was paid salary for the said itself shows that he was working flawlessly on the said post. There is no explanation by the management that if as per version of management workman was not qualified for the post then why the work of Black Smith was taken from the workman for such a long time *i.e.* about 25 years and he was accordingly paid salary for the post. After taking the work of Black Smith from the workman for 20-25 years. It is not open for the management to say that

he was not qualified for the post; and accordingly, had been regularized formally against the post of Black Smith he might have been extended all the benefits available to the post of Black Smith.

16. The workman has relied on 2008 (119) FLR 43 Mohammed Ali vs. State of Rajasthan and another, wherein Hon'ble Rajasthan High Court, allowing the petition seeking grant of regular pay scale of the post of Pump Driver and regularization on the said post, has opined that denial of regularization, and regular pay scale to the petitioner after lapse of 20 years is illegal. In the said case law Hon'ble High Court, relying upon directives of Hon'ble Apex Court in Uma Devi's case, has observed that it is the duty of respondents to take proper action for granting regularization and regular pay scale to those employees who had completed more than 10-15 years of service.

In the present case the workman has been working on the post of Black Smith *w.e.f.* 16-05-84 and getting salary accordingly for more than 25 years. Accordingly, the legal position laid down by Hon'ble Rajasthan High Court in above case law and Hon'ble Apex Court in Uma Devi's case it is a just case where management of the railways may be directed to consider the case of the workman for regularization from the said date he has been given temporary status while working as substitute Black Smith; and should be allowed pension, DCRG and other retiral benefits as admissible under existing Rules.

17. Hence, in view of the discussions made above, I come to the conclusion that the action of the management of North Eastern Railway in not regularizing the workman on the post of Black Smith is unjustified and illegal; and accordingly, the workman is entitled for regularization from the date he has been given temporary status i.e. 16-09-1984 while working as substitute Black Smith and is also entitled for pension, DCRG and other retiral benefits on the rates and on the date of the retirement, as admissible under relevant Rules. The management of the North Eastern Railways is further directed to comply with above directions and release all related payment(s) to the workman within a period of 04 weeks from the date of notification of this award, failing which the workman shall be entitled for simple interest @ 7% on the dues payable to him under Rules, from the date of award till the date of actual payment.

18. The reference under adjudication is answered accordingly.

19. Award as above.

LUCKNOW. Dr. MANJU NIGAM, Presiding Officer
03-09-2012.

नई दिल्ली, 24 सितम्बर, 2012

का.आ. 3198.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 47/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-09-2012 को प्राप्त हुआ था।

[सं. एल-22012/118/2007-आईआर (सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी,

New Delhi, the 24th September, 2012

S.O. 3198.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 47/2007) of the Central Government Industrial Tribunal-cum-Labour Court, NAGPUR as shown in the Annexure, in the industrial dispute between the management of Wani North Area of WCL, Rajur Sub Area of WCL, and their workmen, received by the Central Government on 24-09-2012

[No. L-22012/118/2007-IR(CM-II)]

B.M. PATNAIK, Section Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/47/2007

Date: 11-09-2012

Party No. 1 :
The Chief General Manager,
Wani North Area of WCL
Post Bhalar,
Yavatmal (M.S.)
The Sub Area Manager,
Rajur Sub Area of WCL,
Post: Rajur Colliery, Tah. Wani.
Yavatmal (MS).

Versus

Party No. 2 : The President,
Rashtriya Koyla Khadan
Mazdoor Sangh (INTUC),
Rajur Br. Rajur Sub Area of
WCL, Post Rajur, Tah. Wani,
Distt. Yavatmal (MS)

AWARD

(Dated: 11th September, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of

Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Smt. Shashikala, for adjudication, as per letter No. L-22012/118/2007-IR (CM-II) dated 22-08-2007, with the following schedule:—

"Whether the action of the management of WCL in not correcting the date of Birth of Smt. Shashikala is legal & justified? If not, to what relief is she entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Smt. Shashikala, ("the workman" in short), filed the statement of claim and the management of WCL, ("Party No. 1" in short) filed its written statement.

The case of the workman as projected in the statement of claim is that she was appointed in the year 1997, on compassionate ground, on the death of her husband, Late Mahadev Warpatkar, at Rajura Colliery, Wani North Area, on the post of conductor and at the time of her appointment, her initial medical examination ("IME" in short) was done by the doctor of party no. 1 and her age was recorded as 48 years as on 24-09-1997 by the concerned doctor and as at the time of her appointment, her school leaving certificate was not available with her, she produced the voter's identity card, in which her age was mentioned as 36 years as on 01-01-1994, but the same was not accepted by the Board Members, because she failed to produce any document in support of her date of birth at the time of her appointment and as per her school leaving certificate, her date of birth is 15-10-1956 and the fact of recording of her age as 48 years in all relevant records was not known to her and her signatures were taken by the Board Members on the relevant record, which was in English language and the report of her IME was not served on her and when the fact of recording of her age as 48 years came to her knowledge, she raised objection and filed the school leaving certificate in support of her age and as per the date of her birth mentioned in the school leaving certificate, she was 41 years old at the time of her appointment, but the party no. 1 was not ready to consider the same and at the time of her initial IME, the party no. 1 has not constituted any official committee for the IME and she was examined only by one Medical Officer and no other Medical Officer was appointed by the Board Members for her such examination and signature of other medical officers were obtained on the report after the examination test was over.

It is further pleaded by the workman that at the time of her appointment, there was clear cut instruction in clause 9.5.0. of the National Coal Wage Agreement that, If the age of female dependent is above 45 years she should not get employment, only monetary compensation can be granted and inspite of such instructions, she was given

employment by party no. 1, which shows that she was not above the age of 45 years and party no. 1 violated their own norms and instruction and as at the time of her appointment, she did not possess her school leaving certificate, she arranged for the same and produced the same before the party no. 1 and requested to correct her date of birth in the concerned record, *vide* her application dated 03-03-1999, 26-10-2002 and 20-01-2006, but party No. 1 was not ready to make the correction of her date of birth.

The workman has prayed to direct the party no. 1 to correct her date of birth as 15-10-1956. By way of amendment, the workman has also made a prayer that as during the pendency of the reference, she had been superannuated by the party no. 1 on 01-09-2009, the order dated 01-09-2009 be set aside and she be reinstated in service with full back wages and all consequential benefits.

3. The party no. 1 in their written statement have pleaded *inter-alia* that the workman was appointed on 04-11-1997, as the dependent of her husband, Late Mahadeo Warpatkar, who expired on 10-04-1996 and after the death of her husband, her case for employment was processed under the provisions of NCWA-IV, in which there was provision that spouse shall not have the age limit for employment and on that basis, she was provided with employment and as per the provisions of WCL and NCWA, everyone have to undergo the Medical examination and after being found fit medically, the offer of appointment is given on the terms and conditions of employment and as per the National Coal Wage Agreement, the candidate have to give her/his date of birth certificate to record her/his age and in case, the candidate does not have the date of birth certificate, her/his date of birth is determined by the Medical Board at the time of IME and the date of birth as decided by the Board Members and decision of IME have to be accepted by the candidates as well as the Management and as the workman was not having school leaving certificate at the time of her initial appointment, after her IME, the Board examined her case and decided her age as 48 years as on 24-09-1997 and the same was accepted by the workman and the management and the said date of birth was recorded in all the official records and the workman neither produced any proof of her date of birth at the time of her IME or at the time of filling of the official records, after her appointment and the workman is literate and had given her acceptance to her age as 48 years on 24-09-1997, by signing the official documents, such as service book, form B register and other relevant documents and she did not raise the dispute for correction of her age till 2006 and as soon as her claim for correction of date of birth was replied to by them in negative and it was informed to her of having no scope of correction of her date of birth, she raised the dispute and the correction of date of birth, is not possible at the fag end of her service.

After amendment of the statement of claim regarding the superannuation of the workman on 30-09-2009, by way of amendment, it is pleaded by the party no. 1 that as the workman was superannuated from the service *w.e.f.* 30-09-2009, the correction of date of birth of a retired employee at the belated stage is not possible and at the time of filling up of the official records, the contents of the records in vernacular language and the fact of recording of her age as 48 years as on 24-09-1997 were very well explained to the workman and she signed all the relevant official records after knowing her recorded date of birth and there is no scope for correction of her date of birth in such a belated stage and such correction is also not permissible as per the provision of the implementation instruction No. 76, clause 9 (b), on the basis of the school leaving certificate of the workman, as the same was issued after the date of her appointment.

It is also pleaded by the party no. 1 that the date of birth of the workman was determined by following all the provisions of NCWA and instruction of joint bipartite committee for coal industries and the workman had obtained a false and fabricated school leaving certificate after her appointment and trying to change her date of birth basing on such fabricated and false document and the workman is not entitled to any relief.

4. Apart from placing reliance on the documentary evidence, the workman led oral evidence in support of her claim. The workman in support of her case besides examining herself as a witness also examined one Shri Chandrashekhar Keshavrao Khond, an office Superintendent and Joint Secretary, of the trade union, "Rashtriya Koyla Khadan Mazdoor Sangh" as a witness. No oral evidence adduced on behalf of the party no. 1.

5. The workman in her examination-in-chief, which is on affidavit, has reiterated the facts mentioned in the statement of claim. She has also proved the documents produced by her as Exts. W-I to W-XIII. In her cross-examination, the workman has admitted that after the death of her husband, she filed an application for compassionate appointment on 20-05-1996 and in that application, she had put her LTI and Ext. M-I is her said application and she was medically examined by the Medical Board of the WCL for determination of her age and in his medical examination report, Ext. M-II, her age has been mentioned as 48 years as on 24-09-1997 and in Ext. W-II, the voter identity card her age has been mentioned as 36 years as on 01-01-1994 and according to the school leaving certificate, her date of birth is 15-10-1956. She has categorically admitted that she knew very well that her medical examination was done for determination of her age and after the medical examination, she was intimated that her age was 48 years on the date of her medical examination and Ext. W-II was issued on 05-10-1998 and the same was obtained by her after one year of her

appointment and she had no document to show her date of birth prior to 05-10-1998 and the age as mentioned in the identity card was mentioned as per her version. She has further admitted in her cross-examination that "B-Form" register is being maintained by the management in respect of every employee of WCL and Ext. M-III is the "B-Form" register in respect of herself containing his signature and the same was prepared on 17-08-1998 *i.e.* one year after her appointment and at the time of preparation of the "B-Form" register, she did not produce the school leaving certificate or any other document regarding her age and she did not raise any objection regarding the age mentioned in "B-Form" register and she also did not produce any document in support of her age at the time of opening of the service register and the second service register was opened having her photograph, LTI and signature and Ext. M-V is the said service register and Ext. M. VI is the declaration form given by her for coal mines provident fund and she cannot say if in his service register, Ext. M-V and in Ext. M-VI, her date of birth has been mentioned as 24-09-1949.

6. Witness, Chandrashekhar Keshavrao Khond examined on behalf of the workman in his evidence has stated that at the time of processing of the application of the workman for compassionate appointment, NCWA V was in force and as per clause 3.4 of NCWA V (Clause 9.5.0), the age limit of the female dependant should be below 45 years for consideration of her claim for compassionate employment. The further evidence of this witness is in the line of the stands taken by the workman in her statement of claim. In his cross-examination, this witness has admitted that at the time of appointment of the workman, her age was determined by the medical board and at the time of her appointment, the workman did not file any document in regard to her date of birth.

7. At the time of argument, it was submitted by the learned advocate for the workman that the workman was employed on compassionate ground on 04-01-1997, due to the death of her husband and at the time of her IME, her age was determined as 48 years as on 24-09-1997 and as the school leaving certificate of the workman was not available with her at the time of her appointment, she produced the voter identity card, Ext. W-II, in which her age was mentioned as 36 years as on 01-01-1994 and as per the school leaving certificate, the date of birth of the workman is 15-10-1956 and the workman made number of applications alongwith the copy of the school leaving certificate for correction of her date of birth, but management of WCL did not agree to correct her date of birth and according to the school leaving certificate, the workman was only 41 years of old at the time of her appointment, but the management of WCL did not consider the same and at the time of employment of the workman, NCWA V was in force and according to clause 9.5.0 of the said NCWA V, the case of a female dependent

for compassionate appointment was required to be considered, only if she is below 45 years of age and as the workman was given employment under the provisions of NCWA-V, then her age must have been below 45 years and as such, the recording of the age of the workman as 48 years as on 24-09-1997 is not correct and in view of the documents produced by the workman, it was necessary to correct her date of birth by the WCL and there was no delay in raising the dispute, as the workman did not know about recording of her age as 48 years as on 24.09.1997 on the records of WCL and as soon as it came to her knowledge, she raised objection and made representations for correction of her date of birth and as the workman in the meantime has already been superannuated by the WCL, it is necessary to correct her date of birth as 15.10.1956 and to instate her in service with back wages and all consequential benefits. In support of such contention, the learned advocate for the workman placed reliance on the decision reported in (2009) 1 SCC-80 (Mohd. Yunus Khan Vs. U.P. Power Corporation Ltd.)

8. Per contra, it was submitted by the learned advocate for the party No. 1 that at the time of her appointment, the workman did not produce any document in support of her date of birth, so as per rules and various settlements, the age of the workman was determined by her medical examination and her age was found to be 48 years as on 24.09.1997 and accordingly, her age was recorded as 48 years in the records of the company including "B-Form" Register and service register and the workman was informed about the determination of her age to be 48 years and she did not raise any objection, but signed the records in acceptance of her age as 48 years on 24.09.1997 and it is clear from the evidence on record that she obtained documents Ext. W-II and W-III after her appointment, so the claim of the workman that she had produced the voter identity card Ext-W-II at the time of her appointment is not true and basing on the documents produced by the workman, it is not permissible to correct her date of birth, in view of the implementation instruction no. 76, which is binding on the parties and the workman in her cross-examination has admitted that she knew about determination of her age as 48 years as on 24-09-1997 and she did not raise any objection about her age till January, 2006 and at the end of her service, she applied for correction of her date of birth, so the same was rejected following the provisions of NCWA and the said fact was duly informed to the workman on 07-07-2006 and at the time of the employment of the workman, NCWA-IV was in force, where in, there was no age bar for appointment of the female dependent on compassionate ground and as the date of birth of the workman as per records is 24.09.1949, she was superannuated from services *w.e.f.* 01.10.2009 and the workman is not entitled to any relief.

In support of such contentions, learned advocate for the management placed reliance on the decisions

reported in (2010) 9 SCC-209 (Madan Mohan Singh Vs. Rajnikant), (2010) 8 SCC-714 (Satpal Singh Vs. State of Haryana), (2005) 6 SCC-49 (State of UP Vs. Shiv Narain) and (2006) 5 SCC-584 (Ravinder Singh Vs. State of UP).

So, keeping in view, the principles enunciated by the Hon'ble Apex Court in the judgments cited by the learned advocates for the parties, now, the present case in hand is to be considered.

9. It is the undisputed case of the parties that the workman was given appointment on 04-01-1997, on compassionate ground, due to the death of her husband and she was medically examined and her age was determined by medical examination as 48 years as on 24-09-1997. According to the claim of the workman, as she was not in possession of the school leaving certificate at the time of her appointment, she produced the voter identity card, Ext. W-II, in which her age was mentioned as 36 years as on 01-01-1994, before the authorities of party no. 1 but the party no. 1 did not take the same into consideration. However, I find no force in the said contention, as because, in her cross-examination, the workman has categorically admitted that the voter identity card Ext. W-2 was issued on 05-10-1998 and Ext. W-2 was obtained by her one year after her appointment and she had no document to show her date of birth prior to 05-10-1998. If Ext. W-2 was obtained by the workman on 05-10-1998, then there was no question of producing the Identity card, Ext. W-2 at the time of her employment before the authorities of the party no. 1.

The workman in her statement of claim and in her evidence on affidavit has stated that the fact of recording of her age as 48 years as on 24-09-1997 in all relevant records of party no. 1 was not known to her. However, in her cross-examination, demolishing her own pleadings, the workman has admitted that she was medically examined by the Medical Board of WCL for determination of her age and in the medical examination report, her age has been mentioned as 48 years as on 24-09-1997. It is clear from the materials on records and the pleading of the parties that the workman knew very well that her age was determined as 48 years by medical examination and her such age was recorded in the relevant records of party no. 1 including the "B" form register and service register and the workman acknowledging her age has signed on the concern documents.

10. Admittedly, the workman was appointed on 04-01-1997. It is found from the document, Ext. W-XIV that NCWA-VI was in force at the relevant time and neither NCWA-IV nor NCWA-V was in operation. From Ext. W-XIV, it is found that NCWA-VI was in force from 01-07-1996 to 30-06-2001. It is also found from the provisions of clause 9.5.0 of NCWA-VI that in case of death, total permanent disablement due to causes other than mine accident and medical unfitness, if the female dependent is

up to the age of 45 years, she will have the option either to accept the monetary compensation of Rs. 2000 per month or employment. In this case, it is not disputed that the appointment of the workman was done by party no. 1 even if her age was determined as 48 years by the Medical Board. As because the workman was given compassionate appointment, even if her age was determined as 48 years as on 24.09.1997, in contravention of clause 9.5.0 of the NCWA, it cannot be said that the age of the workman was below 45 years, without sufficient proof in support of the same.

11. It is not disputed that as per the rules and the settlements entered into by the unions and WCL the determination of the age of an appointee at the time of the appointment is to be made by medical examination, in the case of an illiterate employee or in case of non-production of any document in support of his/her date of birth. It is also not disputed that implementation instruction 76 prescribes the procedure for determination/verification of age of employees. In this case, the workman did not produce any document in support of her date of birth at the time of her appointment. So the party no. 1 determined her age to be 48 years as on 24.09.1997, after her medical examination as per rules. the workman did not raise any dispute regarding determination of her age as 48 years by the medical board. It is also provided in the implementation instruction no. 76 that the date of birth as determined by the colliery medical officer shall be treated as correct date of birth and the same will not be altered under any circumstances.

12. The workman raised the dispute to change her date of birth on the basis of the school leaving certificate obtained by her. According to her, her date of birth is 15-10-1956 and as such, it is necessary to correct her date of birth in her service records as 15-10-1956. Implementation instruction no. 76 provides the procedure for review/determination of date of birth in respect of existing employees. Para 'B' of the said instruction, provides that in the case of the existing employees matriculation certificate or higher secondary certificate issued by the recognized universities or board or middle pass certificate issued by the board of education and/or department of public instruction and admit cards issued by the aforesaid bodies should be treated as correct, provided they were issued by the said universities/boards/institutions prior to the date of employment. In this case the school leaving certificate produced by the workman, Ext. W-III has been issued by the Head Master, Jilla Parishad Varist Pratham Shala Board. Ext. W-III is not a certificate as required under para B of implementation instruction no. 76. Moreover, Ext. W-III was issued on 05-10-1998 and not prior to the date of employment of the workman. In view of such facts, the date of birth of the workman cannot be corrected basing on Ext. W-III.

13. Apart from the facts mentioned above, it is found from the documents filed by the workman herself that she has not given her correct date of birth in the said documents and she is also not sure of her real date of birth. In Ext. W-II, the voter Identity card, the age of the workman has been mentioned as 36 years as on 01-01-1994. By taking the said age of the workman into consideration, on calculation, it is found that the date of birth of the workman is 01-01-1958, whereas, in Ext. W-III, the school leaving certificate, the date of birth has been mentioned as 15-10-1956. From Ext. W-V, which is the copy of the application submitted by the workman to the ALC Chandrapur, and Ext. W-VII, the letter submitted by the union to the ALC Chandrapur it is found that, the workman had filed the application for compassionate appointment on 25.01.1997 and in that application, she had mentioned her age as 35 years. So, according to her said application, the date of birth of the workman is 25-01-1962. It is also found from Exts. W-V and W-VII that in the gratuity nomination form, Form-F, the age of the workman was mentioned as 22 years by her husband on 07-10-1984. According to the said statement, the date of birth of the workman is 07-10-1962. As the workman herself has not produced any reliable document in support of her real date of birth, she is also not entitled for correction of her date of birth.

In view of the materials on record and the discussions made above, it is found that the management of WCL did not commit any illegality or irregularity in not correcting the date of birth of the workman. Hence, it is ordered:—

ORDER

The action of the management of WCL in not correcting the date of Birth of Smt. Shashikala is legal & justified. The workman is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 24 सितम्बर, 2012

का.आ. 3199.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट (संदर्भ संख्या 03/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-09-2012 को प्राप्त हुआ था।

[सं. एल-22012/169/2007-आई आर (सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 24th September, 2012

S.O. 3199.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 03/2008) of the Central Government Industrial Tribunal-cum-Labour Court,

NAGPUR as shown in the Annexure, in the Industrial dispute between the management of Western Coalfields Limited, and their workman, received by the Central Government on 24-09-2012.

[No. L-22012/169/2007-IR(CM-II)]

B.M. PATNAIK, Section Officer

ANNEXURE

**BEFORE SHRI J.P. CHAND, PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT, NAGPUR**

Case No. CGIT/NGP/03/2008 Date: 12-09-2012

Party No. 1 : The Sub Area Manager,
Nandgaon U/G Mines, Western
Coalfields Limited, Hindustan Lalpeth
U/G Sub Area, Post: Lalpeth,
Chandrapur.

Versus

Applicant : The President,
Lal Zhanda Coal Mines Mazdoor
Union, Qtr. No. M-305, Shaktinagar
Colony, Durgapur, Chandrapur (MS).

AWARD

(Dated: 12th September, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Shri Ondal Mallaya Gundaya, for adjudication, as per letter No. L-22012/169/2007-IR (CM-II) dated 23-01-2008, with the following schedule:—

“Whether the action of the management of M/s. WCL in rejecting the claim of Shri Ondal Mallaya Gundaya, dependent Son of Late Mallaya Gundaya for employment is legal and justified? If not, to what relief is the dependent entitled?”

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the union, "Lal Zhanda Coal Mines Mazdoor Union", ("the Union" in short) filed the statement of claim on behalf of the applicant Shri Ondal Mallaya Gundaya, ("the applicant" in short) and the management of W.C.L., ("Party No. 1" in short) filed their written statement.

The case of the applicant as presented by the union in the statement of claim is that the party no. 1 is a public

sector undertaking of the Government of India and is a subsidiary of Coal India Ltd., the Apex Public Coal Company and late Mallaya Gundaya, the father of the applicant was employed in the post of Haulage Khalasi in Nandgaon U/G Mines of WCL and he was declared medically unfit on 13-02-1992 and later on he expired on 14-01-1993 and consequent upon the untimely cessation of employment on medical ground and later on death of Late Mallaya, the only bread earner of the family, his eldest son, Komrelli Mallaya was offered employment on compassionate ground in terms of the scheme framed under the NCWA-V, but Komrelli could not join duty, as he was found unfit by the Medical Board of party No. 1 on 21-12-1996, consequently, the legitimate claim of compassionate appointment to a dependent of the deceased employee remained unfulfilled and at the time of declaring Komrelli Mallaya unfit for taking duty by party no. 1, his family members were Smt. Rambai Mallaya (wife, aged about 59 years and not fit for employment), Komralli Mallaya (Son aged about 21 years and declared unfit for employment) Indira Mallaya (daughter aged about 17 years, who got married), Tirpua Mallaya (daughter aged about 15 years) and Ondal Mallaya (son aged about 11 years).

The further case of the union on behalf of the applicant is that after Komrelli was declared unfit to take up the job, the party no. 1 did not make any correspondence with the family of the applicant and Smt. Rambai, wife of the deceased employee did not claim any monetary compensation, she was entitled to get in terms of the NCWA, instead, she prayed for giving employment to her second son after attaining majority, as had been done in the case of similarly situated persons and on attaining majority on 08-10-2002, the applicant, second son of deceased workman, made an application for providing him employment on compassionate ground and the party no. 1 received the application and sought for necessary documents to process his case for employment and the applicant complied with the direction and provided all the necessary documents to party No. 1 and accordingly, his case was duly processed and sent to the competent authority to issue necessary appointment order in favour of the applicant, but party no. 1 failed to consider the issue of providing employment to the applicant and instead intimated him on 10-07-2006 that his case could not be considered as the matter was about 13 years old and the failure of party no. 1 to provide employment to the applicant runs counter to the specific provision made in NCWA and the implementation instruction No. 6 by the Coal India Limited and the applicant had sufficiently demonstrated about his family members to be in distressed financial condition and his employment was necessary to tide over the crises and under such circumstances, the decision of the party No. 1 to deny employment to the applicant is wholly unfair and smacks of arbitrariness and similarly placed dependents of other deceased employees were

being provided suitable employment, where as the applicant is being assiduously discriminated in a show of colourable exercise of employer's right.

The union has prayed to direct the party no. 1 to provide employment to the applicant in any suitable post in terms of the provision of NCWA-V as well as implementation instruction No. 8 issued by Coal India Limited.

3. The party no. 1 in their written statement has pleaded inter-alia that Mallaya Gundaya, while in service as a Haulage Khalasi at Nandgaon underground was declared medically unfit on 13-02-1992 and unfortunately he died on 14-01-1993 and as per the records available with them, deceased Mallaya Gundaya was having two sons and two daughters and his eldest son, Komrelli Mallaya applied for employment as dependent of the deceased employee and his application was considered by them and before offering him employment, he was declared medically unfit by the medical board on 21-12-1996 and therefore, his claim for appointment as dependent of Late Mallaya could not be considered and accordingly, communication was made by them to that effect and Late Gundaya Mallaya had left behind him his two sons and two daughters, besides his wife aged about 59 years and at the time of death of Late Mallaya in 1993, NCWA-V was in operation and as per chapter IX concerning Social Security of the said agreement, there was provisions for employment of dependants of the employees, who die in harness, in accordance with the conditions laid down there in and accordingly, the application of Shri Momrelli Mallaya, who was the only major son of the deceased was duly considered and one of the criteria before offering employment to the dependent was that the said person should be medically fit to perform duties, but unfortunately however, Shri Komrelli when examined by the Medical Board was declared medically unfit to perform the duties and hence his claim for employment was not considered favourably and the applicant, the other son of Late Mallaya Ondal was aged 11 years, a minor at that time and therefore could not be offered employment and after lapse of a period of more than 13 years, in 2002, they received the application of the applicant requesting to give him employment and since, there was inordinate delay and also falling outside the consideration zone, his claim could not be considered and accordingly, the same came to be disallowed and wife of Late Mallaya refused to accept monetary grant as admissible under NCWA. It is further pleaded by the party no. 1 that as the union has not produced any material on record to show that they are entitled to raise the dispute on behalf of the applicant and the claim in question tantamount to an industrial dispute in accordance with section 2-K of the Act, the same is liable to be rejected and the applicant is not entitled to any relief.

4. The union has examined its Secretary, S.H. Baig as a witness in support of the claim of the applicant. In his evidence on affidavit, the witness has reiterated the facts mentioned in the statement of claim. However, in his cross-examination, the witness has admitted that on 13-02-1992, deceased Mallaya was declared unfit for work by the Medical Board and Mallaya Gundaya died on 14-01-1993 and at the time of death of Mallaya, his son, Komrelli Mallaya was the only eligible member for appointment and Komrelli had applied for his employment in place of his deceased father and WCL had considered his application for employment and sent him for his medical examination and Komrelli was found unfit for employment on his medical examination, so the management rejected his application and he cannot say when the applicant for the first time applied for appointment, but about 13 years after the death of his father, the applicant applied for employment.

5. On perusal of the materials on record including the pleadings of the parties it is found that there is no dispute that deceased Mallaya Gundayya was working as a Haulage Khalasi in Nandgaon underground coal mine and he was declared medically unfit to do the job on 13-02-1992 and later, he expired on 14-01-1993 and Komrelli Mallaya, the eldest son of the deceased workman Mallaya Gundaya and the only eligible person for compassionate appointment as per the provisions of NCWA-V applied for his employment and party no. 1 considered his claim and sent him for his medical examination and as unfortunately he was found unfit for employment by the Medical Board after his medical examination, his application for employment was rejected and he was not given employment. It is also not disputed by the parties that the applicant filed the application on 08-10-2002, to give employment on compassionate ground.

6. At the time of argument, it was submitted by the learned advocate for the applicant that the parties are bound by the provisions of National Coal Wage Agreement which was in force at the relevant time and when the father of the applicant was declared medically unfit to do the job and when he died, NCWA-V was in force and provisions of Social Security were incorporated in chapter-IX of the said NCWA and provision of compassionate appointment was provided in clause 9.5.0 of the said chapter and as there was nothing in clause 9.5.0 regarding any time limit for filing application for compassionate appointment, the rejection of the application of the applicant for compassionate appointment on the ground of delay is illegal and as such, the applicant is entitled for employment in a suitable post in accordance with the provisions of NCWA-V.

7. On the other hand, the learned advocate for the party No. 1 submitted that the application for compassionate appointment of the applicant was

considered by party no. 1, but as there was delay of 13 years in filing the application and as the applicant was not entitled for such employment as per the provision of NCWA-V, his application was rejected and the applicant is not entitled to any relief.

8. For better appreciation of the matter for consideration, I think it proper to mention the provision of clause 9.5.0 of chapter-IX of NCWA-V, which are as follows:—

"Employment/Monetary compensation to female dependent

Provision of employment/monetary compensation to female dependants of workmen who die while in service and who are declared medically unfit as per clause 9.4.0 above would be regulated as under:—

(iii) In case of death either in mine accident or for other reasons or medical unfitness under clause 9.4.0, if no employment has been offered and the male dependent of the concerned worker is 15 years and above in age he will be kept on a live roster and would be provided employment commensurate with his skill and qualification when he attains the age of 18 years. During the period the male dependent is on live roster, the female dependant will be paid monetary compensation as per rates at paras (i) & (ii) above."

It is clear from the provisions of clause 9.5.0 that in case of death either in mine accident or for other reasons or medical unfitness of an employee under clause 9.4.0, if no employment has been offered and the male dependent of the concerned worker is 15 years and above in age he will be kept on a live roster and would be provided employment commensurate with his skill and qualification, when he attains the age of 18 years.

In this case, the eldest son of the deceased workman was not given employment as he was medically found unfit. It is also the admitted case of the applicant that at the time of declaration of his father medically unfit, he was 11 years old. As the age of the applicant at that time was not 15 years or above, there was no question to keep his name on the live roster and to provide him employment on his attaining 18 years of age.

Admittedly, no time limit has been prescribed for submission of application for compassionate appointment in NCWA. However, it is settled beyond doubt in chain of decisions by the Hon'ble Apex Court that the object of making appointment on compassionate grounds is to provide immediate substance to dependent family members of deceased employee. The very object of making appointment on compassionate grounds is to rehabilitate the family in distress of the deceased employee who dies

in harness, so belated claim for compassionate appointment cannot be entertained.

In this case, admittedly the father of the applicant declared medically unfit on 13-02-1992 and the applicant filed the application for compassionate appointment on 08-10-2002, more than ten years after the declaration of his father being unfit to do the job. The case of the applicant is that he was 11 years old on 13-02-1992. So he must have attained majority i.e. 18 years of age in February, 1999. However, he filed the application for compassionate appointment on 08-10-2002, more than three years of attaining majority. As there was inordinate delay in submission of the application by the applicant, the same was rightly not entertained by the party No. 1.

From the materials on record and the discussions made above, it is found that party no. 1 rightly had rejected the application of the applicant for compassionate appointment. Hence, it is ordered:—

ORDER

The action of the management of M/s. WCL in rejecting the claim of Shri Ondal Mallaya Gundaya, dependent Son of Late Mallaya Gundaya for employment is legal & justified. The applicant is not entitled to any relief.

J.P. CHAND, Presiding Officer

नई दिल्ली, 24 सितम्बर, 2012

का.आ. 3200.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू सी एल के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, श्रम-न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 01/2002 को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-09-2012 को प्राप्त हुआ था।

[सं. एल-22012/62/2001-आई आर (सी एम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 24th September, 2012

S.O. 3200.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 01/2002) of the Central Government Industrial Tribunal-cum-Labour Court, NAGPUR as shown in the Annexure, in the industrial disputes between the management of Hindustan Lalpeth U/G Sub Area of WCL, and their workmen, received by the Central Government on 24-09-2012.

[No. L-22012/62/2001-IR(CM-II)]

B.M. PATNAIK, Section Officer

ANNEXURE**BEFORE SHRI J.P. CHAND, PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT, NAGPUR****Case No. CGIT/NGP/01/2002**

Date: 12.09.2012

Party No. 1 : The Sub Area Manager,
Hindustan Lalpeth U/G Sub Area of WCL
PO: Lalpeth
Chandrapur (MS)**Versus****Party No. 2 :** Shri R.B. Mistry, Secretary,
Sanyukta Khadan Mazdoor Sangh
(AITUC), Hindustan Lalpeth U/G Sub
Area, Post: Lalpeth, Chandrapur (MS).**AWARD**

(Dated: 12th September, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial disputes between the employers, in relation to the management of WCL and their workman, Shri Shankar Bankar, for adjudication, as per letter No. L-22012/62/2001-IR (CM-II) dated 19-12-2001, with the following schedule:—

“Whether the action of the management of Nandgaon Incline of Hindustan Lalpeth U/G Sub Area of WCL, Chandrapur in dismissing Shri Shankar Narayan Bankar, Clerk from services vide order no. WLC/CHA/HLUGSA/NI/SOM/PER/0131 dated 13-04-2000 and order No. WCL/CHA/HLUGSA/NI/SOM/PER/389 dated 15-05-2000 is legal and justified? If not, to what relief he is entitled?”

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the workman Shri Shankar Bankar, (“the workman” in short) filed the statement of claim and the management of WCL Hindustan Lalpeth Area (“party no. 1” in short) filed the written statement.

The case of the workman as projected in the statement of claim is that he was appointed on 20-03-1975 and since then, he was working to the satisfaction of party no. 1 and while he was working as a magazine clerk in the explosive magazine of Nandgaon mine of Hindustan Lalpeth, a charge sheet was submitted against him on 03-10-1991, on the allegation of his involvement in a case of theft of detonator and gelatin, as one Shri B.K. Tekam, an explosive carrier during interrogation by police, named him as a culprit in committing theft of detonator and gelatin of party no. 1 and there was no written complaint against him and the enquiry officer did not supply him the copy of the complaint, even though the charges were based on such complaint and in the departmental proceedings,

neither the complaint nor the police authorities on whose initiative the charge sheet was submitted against him were produced and Shri Tekam was also not produced as a witnesses and there was no evidence in the departmental enquiry to hold him guilty of the charges and the charges were not proved in the departmental enquiry and he was not given proper opportunity to defend himself in the enquiry and principles of natural justice were violated and copy of the enquiry proceedings was not supplied to him and the enquiry officer was biased and not impartial and the findings of the enquiry officer are perverse and he was wrongfully dismissed from services. The further case of the workman is that though Shri B. K. Tekam was the main culprit and Shri B.K. Tekam was arrested by the police, while trying to sell the detonator and gelatin and a charge sheet was issued against Shri Tekam, subsequently, the party no. 1 cancelled the charge sheet and the action of party no. 1 is discriminatory and in the criminal case initiated by the police, he was discharged by the court on 25-02-2000 and he submitted the order passed by the court before the party no. 1 on 02-03-2000, but party no. 1 without taking the same into consideration, issued order of dismissal on 13-04-2000, but the said order was kept in abeyance and the party no. 1 issued another dismissal order on 15-05-2000 and in view of his discharge in the criminal case, the party no. 1 should have dropped the departmental proceedings and second show cause notice was not issued to him and when he filed an appeal against the order of dismissal dated 13-04-2000, which was received by the party no. 1 on 17-04-2000, the party no. 1 realized the mistake committed by it and kept the order of dismissal in abeyance and after manufacturing a false show cause notice and showing the same to have been issued on 11-04-2000 again dismissed him from service by letter dated 15-04-2000 and from the show cause notice dated 11-04-2000 produced by the party no. 1, it can be found that the same is not genuine, as because by that letter, he was allowed 72 hours to file his show cause, but before lapse of 72 hours i.e. within 48 hours, the order of dismissal was passed on 13-04-2000 and the party no. 1 violated the principles of natural justice and the entire action of the party no. 1 is malafide and colourable exercise of power and the same is also violative of the provision of the clause 28 of the Certified Standing Order, as the approval of competent authority was not taken for his dismissal from services. The workman has prayed for his reinstatement in service with continuity and full back wages.

3. The party no. 1 in its written statement has pleaded inter-alia that the workman before being dismissed from the services was working as a magazine clerk at Nandgaon incline and was assigned the duty of issuing explosives and maintaining their proper records and the explosives are being used in the mine for blasting of coal and the job of the clerk dealing with explosives is highly responsible and required high degree of integrity, sincerity and

devotion and on 29-09-1999, a complaint was received from the police that one Baliram, an explosive carrier of Nandgaon Incline was caught hold of by them, while selling detonator and gelatins and said Baliram before the police disclosed that he had obtained the explosives from the workman and the workman was arrested as an accomplice in the said illegal act and was arrested by the police and for that, the workman was charge sheeted and placed under suspension, pending enquiry, vide charged sheet dated 04-11-1999 and the workman was asked to submit his written explanation within 72 hours of the receipt of the charge sheet and the records and registers regarding issue of explosives for the relevant periods were checked and it was noticed that there were lot of cuttings and over writing in the registers maintained by the workman, which were obviously done with an ulterior motive and the workman submitted his written explanation on 09-10-1999 and as the explanation was found not to be satisfactory, a departmental enquiry was ordered and one Shri D.K. Chandok was appointed as the enquiry officer and the workman appeared in the enquiry along with his co-worker and when the workman did not admit the charges, the management representative made a statement and produced the complaint received from the police and also produced the relevant portions of the issue and return registers regarding the explosive, showing over writings and the documents were seen and noted by the workman and his co-worker and were duly marked as exhibits in the enquiry and the workman was given the opportunity to cross-examine the management representative, but he declined to cross-examine, on the ground that a criminal case is subjudiced against him in that regard and therefore, the departmental proceedings be stayed till the disposal of criminal case and the workman also declined to participate in the enquiry, so the enquiry was adjourned to 04-11-1999, on which date, the workman fully participated in the enquiry and cross-examined the witness of the management and the workman was also given scope to adduce evidence in his defence and the workman examined himself and he was cross-examined by the management representative and thereafter, the enquiry was closed and the enquiry officer submitted his report holding the workman guilty of the charges leveled against him and the enquiry officer analyzed the evidence led by the parties and arrived at the findings in an objective manner and the disciplinary authority by taking into consideration the materials on record concluded that the charges levelled against the workman to have been proved beyond doubt and considering the seriousness of the misconduct, he passed the punishment of dismissal from services against the workman; after obtaining approval of the competent authority, as per order dated 13-04-2000, but as before the dismissal of the workman, he was not supplied with the copy of the enquiry report and was not offered opportunity to make representation, a copy of enquiry report was supplied to the workman dated 11-04-2000 and he was

asked to show cause within 72 hours of receipt of the letter and in view of the same, the order of dismissal dated 13-04-2000 was kept in abeyance and the second show cause submitted by the workman was received on 17-04-2000 and the reply of the workman was considered and as the reply was found not satisfactory, it was decided to dismiss him from services and accordingly the case was referred to the Chief General Manager, for grant of his approval and after receipt of the approval of the Chief General Manager, the workman was finally dismissed from the services by order dated 15-05-2000. It is further pleaded by the party no. 1 that the enquiry was fair and proper and in accordance with the principles of natural justice and the workman is not entitled for any relief.

4. As this is a case of dismissal of the workman from services, after conducting a departmental enquiry against the workman, the validity and fairness of the departmental enquiry was taken for consideration as a preliminary issue and by order dated 21-02-2012, the departmental enquiry was held to be legal, proper and in accordance with the principles of natural justice.

5. In the written notes of argument, it was submitted by the learned advocate for the workman that the workman was working as a magazine clerk in the explosive Magazine of Nandgaon Mine and his duty was to issue detonator explosive to the shot firer and explosive carrier on the basis of requisition signed by the shot firer and counter signed by the Assistant Manager of the shift and as per the provision of coal mines regulation, detonators are issued only to the shot firer and the unused detonators are returned by the shot firer and accordingly, the stock entries of detonators are maintained and during the service period of the workman, there was never any discrepancy between the physical stock position of detonators and stock position of detonators in the stock register and it was also admitted by the management that there was neither any excess or shortage of detonators in the stock of detonators during inspection of the record and according to the case of the management, one Mr. B.K. Tekam, an explosive carrier was caught hold of by the police, while selling detonators in the market and during his interrogation, he gave out the involvement of the workman in the incident and as per the information of Mr. Tekam before the police, a criminal case for commission of theft was initiated against the workman by the police bearing No. 230/1999, but the workman was acquitted in the criminal case, by the Judicial Magistrate First Class. It was further submitted by the learned advocate for the workman that the party no. 1 also served the charge sheet dated 04-10-1999 on the workman for the same incident and charges under clause 26.15, 26.22, 26.27 and 26.30 were levelled against him and punishment of dismissal from services was passed against him and before passing of the order of punishment, second show cause notice was not issued and as such, imposition of the punishment is illegal and

the copy of the enquiry report was also not supplied to the workman and the order of dismissal from services dated 14-04-2000 was kept in abeyance and he was finally dismissed from services by order dated 15-05-2000 and the findings of the enquiry officer are based on no evidence and this is a case of no evidence and the findings are perverse and as the punishment against the workman was passed, basing on such perverse findings, the same is illegal and the enquiry officer did not consider the acquittal of the workman from the charges of theft by the court and the punishment is highly disproportionate.

It is necessary to mention here that though the learned advocate for the workman referred about two judgments, *K.P. Gupta Vs. SBI* (4) LLJ-775 (Goa HC) and *Kanubai P. Shah Vs. Bank of Baroda-2006 III CLR-592* (Guj. HC-DB) in the written notes of argument, he did not file the said judgments for perusal of the Tribunal.

6. On the other hand, it was submitted by the learned advocate for the party no. 1 that in this case, the Tribunal has already held the departmental enquiry conducted against the workman to be legal, proper and in accordance with the principles of natural justice and though the workman in the statement has mentioned that the findings of the enquiry officer are perverse, such claim has neither been specified nor proved by referring to specific instances in the findings, which could render the same perverse and mere allegation cannot be accepted unless specifically proved and the same has not been done by the workman. It was further submitted that the enquiry officer while recording his findings has specifically mentioned that after examining and going through the entire enquiry proceedings and circumstantial evidence and documents filed by the management, he had come to the conclusion that charges levelled against the workman were proved and the materials on record show that the enquiry officer was neither biased nor his report was perverse and it is well settled by the Hon'ble courts by the pronouncement in different judgments that the report of an enquiry officer can be held to be perverse, if the report is not based on evidence on record, if the report is contrary to the records and if the report is such, which could not have been arrived at by any reasonable person and as in this case, the report of the enquiry officer is based on materials on record, the same is also not contrary to the evidence on record nor it is such that no reasonable man could have arrived at, the report of the enquiry officer cannot be termed as perverse and the workman tampered with the register and did manipulations by over writing to cover up the pilferage of the explosive materials, which were found by the police, while being sold by Shri Tekam and Shri Tekam made a statement before the police that he had obtained the explosive material from the workman and the workman was arrested by the police and on receipt of the police report, the explosive issue register was checked and it was found that there had been over writing and manipulations and as

there was a prima facie case against the workman, charge sheet was submitted against him and departmental proceedings and criminal proceedings being different, do not bind each other and initially, the workman was dismissed without supplying him the copy of the enquiry report and when the same was found not to be proper, a copy of the enquiry report was supplied to the workman for submission of his say and in view of the said position, the earlier order of dismissal was kept in abeyance and the workman submitted his reply, which was examined and found not satisfactory, so he was finally dismissed on 15-05-2000.

It was also submitted by the learned advocate for the party no. 1 that Shri Tekam was also charge sheeted and a departmental enquiry was held against him and as he was found guilty in the enquiry, he was dismissed from services vide order no. 2650 dated 11-02-2002 and there was no discrimination and the workman has not claimed that the punishment is disproportionate to the charges much less shockingly disproportionate to the charge and therefore, the question of going into this aspect of the matter does not arise and the workman is not entitled to any relief.

In support of the contentions, the learned advocate for the party no. 1 placed reliance on the decisions reported in *AIR 1970 SC-1334* (M/s. Perry and Co. Ltd. Vs. P.C. Paul), *AIR 1972 SC-3182* (BEL and P. Ltd. Vs. Labour Court No. 2), *LAB I.C. 2367* (Syed Rahimuddin Vs. Director General, CISR), *1996 LAB I.C.-462* (Union of India Vs. B.C. Chaturvedi), *2003 LAB I.C.-575* (Regional Manager, UPSRTC Etwa Vs. Hotelal & Others), *2005 LAB I.C.-4158* (V.Raman Vs. APSRTC) and *2005 LAB I.C.-854* (Bharat Forge Co. Ltd. Vs. Uttam Manohar Nekate).

7. It is clear from the principles enunciated by the Hon'ble Apex Court in the decisions cited by the learned advocate for the party no. 1 that the jurisdiction of the Tribunal to interfere with the disciplinary matters for punishment cannot be equated with an appellate jurisdiction and the Tribunal cannot interfere with the findings of the enquiry officer or competent authority where they are not arbitrary or utterly perverse and the power to impose penalty on a delinquent officer is conferred on the competent authority either by an act of legislature or rules made under the provision to Article 309 of the Constitution and if there has been an enquiry consistent with the rules and in accordance with principles of natural justice, what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority and if the penalty can be lawfully imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority.

It is also settled beyond doubt that a disciplinary proceeding is not a criminal trial and the standard of proof

required is that of preponderance of probability and not proof beyond reasonable doubt. It is also well settled that the technical rules which govern criminal trials in court may not necessarily apply to disciplinary proceedings, but never the less, the principles that in punishing the guilty, scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary enquiries held under the statutory rules.

It is also settled by the Hon'ble Apex Court that a finding recorded in a domestic enquiry cannot be characterized as perverse by the labour court, unless it can be shown that such a finding is not supported by any evidence, or is entirely opposed to the whole body of the evidence adduced. In a domestic enquiry once a conclusion is deducted from the evidence, it is not permissible to assail the conclusion even though it is possible for some other authority to arrive at a different conclusion on the same evidence, but finding based on no evidence can be rejected as perverse and interference with the finding of fact in disciplinary enquiry is permissible only when there is no material for the said conclusion or that on the materials, the conclusion cannot be that of a reasonable man.

So keeping in view the settled principles as mentioned above, now, the present case in hand is to be considered.

8. Before delving into the merit of the matters, I think it proper to mention the charges levelled against the workman.

The English version of the charge sheet submit against the workman is as follows:—

Western Coal Fields Limited
Office of the Superintendent of Mines/Manager,
Nandgaon Incline, Lalpeth underground Sub-Area.

To,

Shri Shankar Narayan Bankar,
Clerk, Nandgaon Incline,

Charge Sheet

You are working as the magazine clerk at Nandgaon Incline. On 29-09-1999, a complaint against you was received that Shri Baliram Kishan Tikaram, explosive carrier, Nandgaon Incline, who had sold detonator and gelatin informed the police that in the sale of detonator and gelatin made by Shri Baliram Tekam, you were an accomplice, for which police detained/arrested you on 29-09-1999. Complaint and information had been received against a clerk working in a responsible, important and sensitive post like you and your action amounts to misconduct under the following clauses of the certified standing orders of the company for which appropriate punishment has been prescribed. The clauses of the certified standing orders of the company are as follows:

Clause 26.15 Any breach of the Mines Act, 1952 or any other Act or any Rules, Regulations or by laws thereunder.

Clause 26.22 Any willful and deliberate act which is subversive of discipline or which may be detrimental to the interest of the company.

Clause 26.39 Abetment of any misconduct.

As the charges levelled against you are very grave in nature and taking into consideration the gravity of the charges, you are put under immediate suspension.

You are directed to submit your written explanation to the charge sheet within 72 hours to the under signed. If your written explanation will not be received by the under signed within the stipulated period, then it will be deemed that you do not have any explanation to offer and the management will be compelled to take further action in the matter.

During the period of suspension, you have to appear and mark your attendance before the attendance clerk in the attendance room each day at 9.00 AM to receive further intimation.

Superintendent of Mines/Manager,

Nandgaon Incline

9. On bare perusal of the allegations made against the workman and the charges levelled against him in the charge sheet, it is clear that the allegations do not constitute any of the charges levelled against the workman. No allegation was made in the charge sheet against the workman that he made cuttings and over writing in the relevant records and registers regarding issue of explosives with ulterior motive to cover up the pilferage of the explosive materials or that there was actually any pilferage of the explosive materials.

In the departmental enquiry held against the workman, management examined the management representative as a witness, which is not permissible according to law. Moreover, it is clear from the materials on record that the management representative has only stated about the case of the management in his evidence and he was not an eye witness to any allegation made against the workman.

Except the management representative, management did not examine any other witness to prove the charge against the workman. Neither Shri Baliram Kishan Tekam, the explosive carrier, basing on whose statement police registered a criminal case against the workman and arrested him, nor the police officer before whom, Shri Baliram gave his statement, or the police officer, who gave the information to the management about the involvement of the workman in commission of the offence and about the arrest or the person, who verified the concerned records

and register of issuance of explosive materials was examined in the enquiry. It was never the case of the management that the physical stock of the explosive materials was verified with reference to the concerned records and registers and discrepancy was found in the physical stock position and the stock position shown in the records and registers. On perusal of the materials on records, it is found that neither there is any direct evidence nor any circumstantial evidence or record to prove the charges against the workman. It is a case of no evidence against the workman. It is also found that the findings of the enquiry officer is wholly against the evidence on record of the enquiry proceeding and the findings are perverse. As the findings of the enquiry officer are perverse and basing on such perverse findings, the disciplinary authority has imposed the punishment of dismissal of the workman from services, the same is illegal and cannot be sustained.

Taking into consideration the entire facts and circumstance of the case, it is held that the workman is entitled to reinstatement in service with continuity and 50% of back wages and all other consequential benefits. Hence, it is ordered:—

ORDER

The action of the management of Nandgaon Incline of Hindustan Lalpeth U/G Sub Area of WCL, Chandrapur in dismissing Shri Shankar Narayan Bankar, Clerk from services vide order no. WLC/CHA/HLUGSA/NI/SOM/PER/0131 dated 13.04.2000 and order No. WLC/CHA/HLUGSA/NI/SOM/PER/389 dated 15.05.2000 is illegal and unjustified. The party no. 1 is directed to reinstate the workman, Shri Shankar Narayan Bankar in service with continuity and 50% of back wages and all other consequential benefits within one month from the date of Publication of the award in the Official Gazette.

J.P. CHAND, Presiding Officer

नई दिल्ली, 24 सितम्बर, 2012

का.आ. 3201.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, असंसोल के पंचाट (संदर्भ संख्या 03/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-09-2012 को प्राप्त हुआ था।

[सं. एल-22012/22/2009-आई आर (सी एम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 24th September, 2012

S.O. 3201.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. 03/2010) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the industrial dispute between the management of Ukhra Regional Work Shop, M/s. ECL and their workmen, received by the Central Government on 24-09-2012.

[No. L-22012/22/2009-IR (CM-II)]

B.M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT : Sri Jayanta Kumar Sen,
Presiding Officer

REFERENCE NO. 03 OF 2010.

PARTIES: The General Secretary, KMC,
Asansol (WB)

Vs.

The GM, Ukhra Regional
Workshop, M/s, ECL, Burdwan
(W.B.)

REPRESENTATIVES:

For the management: None

For the union (Workman): Sri Rakesh Kumar, Ld.
Representative

INDUSTRY: COAL STATE: WEST BENGAL

Dated: 30.08.2012

AWARD

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India through the Ministry of Labour vide its letter No. L-22012/22/2009/IR(CM-II) dated 18-01-2010 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of M/s. ECL in denying employment to the dependant of Late Dip Narayan Singh, Ex-Driver is legal and justified? To what relief is the claimant entitled for?"

Having received the Order of Letter No. L-22012/22/2009/IR(CM-II) dated 18-01-2010 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 3 of 2010 was registered on 29-01-2010 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements alongwith the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

Sri Rakesh Kumar, Ld. Representative of the Union, appears and submits that the workman is not interested to contest the case further. Since the workman is no more interested to proceed with the case further, the case is closed and accordingly an order of "No Dispute" is hereby passed.

ORDER

Let an "Award" be and the same is passed as no dispute existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

JAYANTA KUMAR SEN, Presiding Officer

नई दिल्ली, 24 सितम्बर, 2012

का.आ. 3202.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14), की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स ओरिएण्टल इश्योरेंस कम्पनी लिमिटेड, पुणे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, पुणे के पंचाट (संदर्भ संख्या 41/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 18-09-2012 को प्राप्त हुआ था।

[सं. एल-17012/6/2005-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 24th September, 2012

S.O. 3202.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), Central Government hereby publishes the Award (Ref. No. 41/2005) of the Central Government Industrial Tribunal/Labour Court, Pune now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of M/s Oriental Insurance Co. Ltd., Pune and their workmen, which was received by the Central Government on 18-09-2012.

[No. L-17012/6/2005-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL MAHARASHTRA AT PUNE

Reference (IT) No. 41 of 2005

1. The Regional Manager,
The Oriental Insurance Co. Ltd.
Process House, Pune-Mumbai Road, Pune-5.
2. The Divisional Manager,
Oriental Insurance Co. Ltd.
Jeevan Darshan Bldg., N.C. Kelkar Road, Narayan
Peth, Pune-30.

....First Party

AND

Ganesh Gulab Pandit

Type 2 No. 6/12

Range Hills, Pune-411020

....Second Party

CORAM : M. G. Choudhary, Presiding Officer

APPEARANCES: Shri A.K. Gupta, Advocate for First Party, Shri Y.Y. Gaikwad, Advocate for Second Party.

AWARD

(17-07-2012)

The Government of India through Ministry of Labour in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the industrial dispute between above named parties for adjudication by this Tribunal. The demand of the Second Party workman i.e. industrial dispute which is referred to this tribunal for adjudication is mentioned in the Schedule of the reference order which reads as under:

SCHEDULE

"Whether the action of the management of Oriental Insurance Co. in initiating disciplinary action after lapse of more than 2 years and dismissing Shri. Pandit for absenteeism is legal and justified? If not, to what relief the concerned workman is entitled to?"

2. In response to the notice issued by the Tribunal, the Second Party appeared and filed statement of claim in the matter at Exh. U-3, and contended that he was in the employment of the First Party initially appointed as part time employee from 14-12-1998 and according to him, he was regularly performing his duties. However, due to piles he was unable to move. Hence he remained absent from duty from 6.11.2000 and thereafter he informed the First Party about his illness and for the said illness he was taking treatment from the Doctor and to that effect application and medical certificate were submitted. According to Second party thereafter there was a quarrel with his relative which was resulted in the injury, for that he was hospitalised for three days. According to Second

Party thereafter he resumed the duties after submitting Fitness Certificate. It is contention of the Second Party that from 6-11-2000 to 15-3-2001, he was continuously absent from duty and before that he did not take prior permission of his absence. According to Second Party again he remained absent from duties due to his illness for a continuous period of 130 days. According to Second Party, as he started regularly remaining present on his duties from 16-3-2001, thereafter he was made Full Time Employee. It is contention of the Second party that female employees in the office used to tell him private work for purchasing vegetables, and when he started refusing to do their work the female employees made complaint against him to the officer alleging that the Second Party is singing vulgar songs and using filthy language. According to Second party, after the period of two years, he was given one chargesheet in which allegations were made that he remained absent from 6-11-2000 to 15-3-2001, and thereafter enquiry was held. On the basis of enquiry report, he came to be terminated from the services. Thus, according to Second Party the action of the First Party against him is illegal and wrongful and lastly requested to allow the reference.

3. The First Party in written statement at Exh. C-6 denied the allegations as alleged in the state of claim and contended that present reference is not maintainable as it is not sponsored by union or workmen. According to First Party, the Second Party was initially appointed as Part Time Sweeper *vide* appointment letter dated 14-12-1998 (Date of joining of 22-12-1998). He was appointed as a Full Time Sweeper *vide* appointment letter dated 27-2-2002 (Date of joining 1-3-2001) on probation for six months. His probation was extended by letter dated 14-1-2003 as his performance during the probation was not satisfactory. Again his probation was extended by letter dated 30-5-2003 for six months. His performance report dated 31-3-2003 shows that his performance was not satisfactory. According to First Party, a complaint was made by lady staff members by letter dated 27-9-2002 against the Second Party. According to First Party, he has issued chargesheet to him on 3-3-2003 for unauthorised absence for the period from 6-11-2000 to 15-3-2001 for 130 days. According to First Party, considering the probation of the Second Party there was no lapse on the part of the First Party to issue chargesheet after some time, and action against the Second Party is fully justified and legal. It is denied action against the Second Party is illegal and wrongful as alleged. According to First Party, the Second Party admitted his absence by letter dated 21-3-2003. Hence his termination was effected by letter dated 8-8-2003. Thereafter, appeal was preferred by him. The same came to be rejected on 17-10-2003. Thereafter, the Second Party submitted his memorial as per rules. The same was also rejected on 19-5-2005. Thus, on all these background lastly requested to reject the reference.

4. Here I would like to mention that this Court by order dated 5-7-2011 tried two preliminary issues, one is about fairness of enquiry and another is about perversity of findings and this Court observed in the order that the enquiry conducted against the Second Part workman is just, legal and proper and misconduct is proved on the basis of evidence recorded in the enquiry and now this Tribunal is deciding remaining issues by this final award.

5. Following issues are framed in the matter at Exh. O-6 by my Ld. Predecessor on 17-8-2007 which arise for my determination:—

- (1) Whether enquiry is fair, legal and proper?
- (2) Whether misconduct is proved on the basis of evidence recorded in an enquiry?
- (3) If not, whether the misconduct is proved on the basis of evidence recorded before the Court?
- (4) Whether termination of services of Second Party is illegal?
- (5) What reliefs Second Party is entitled?
- (6) What award?

My findings to above issues for the reasons recorded below are as under:—

- (1) Already decided as per order dated 5-7-2011;
- (2) Already decided as per order dated 5-7-2011;
- (3) Does not survive;
- (4) No;
- (5) Not entitled;
- (6) Reference stands rejected, as per order below.

REASONS

6. Both the parties have produced the documents on record. The Second Party has produced documents with list Exh. U-14 and U-6 namely appointment letter, medical certificate, complaint, reply, representation. The First Party also produced documents on record with list Exh. C-8 i.e. enquiry proceedings, appointment order, orders passed by appellate authority, past service record, copies of order of probation, copies of order of extension of period of probation etc.

7. The Second Party in order to prove his case deposed in the matter at Exh. U-12, and in his examination in chief, he has stated that his termination of services was illegal and he is not employed after his termination from 8-8-2003 and he has repeated the same things as per his stand in statement of claim by way of affidavit. In cross examination, he has stated that he cannot tell why he has not pleaded in statement of claim to that effect that he was not gainfully employed after his termination. He has stated that after his termination he did not try for alternate employment. He has admitted that as he did not try for alternate employment after termination, hence, he did not get work. Questions were put to him about maintenance of his family members and he has stated that his mother is

getting pension. He has admitted that he gave application at Exh. C-11 in the enquiry by which he admitted his absenteeism. He has admitted that alongwith the application Exh. C-11, he did not attach medical certificate. He has admitted that First Party gave him a letter dated 27-9-2002 alleging that he was signing songs towards looking at the female staff in the office and also using vulgar language. He has admitted that he gave reply to this letter in which it is mentioned that he is ready to tender apology of concern female staff and also in future he will be very cautious about his behaviour in the office. He has admitted that he was given warning letter dated 3-10-2002 for the allegations made in the letter dated 27-9-2002. He has admitted that warning letters which are on record are at Exh. U-15, U-16, U-17 and he has denied other suggestions given to him in his cross examination. The First Party has not examined any witness *vide* purshis Exh. C-22.

8. With the help of material on record I have heard the argument of Advocates for both the parties at length and both of them have submitted their case as per material on record. In addition to that the Advocate for the second party in support of his argument relied on the case law reported in 2012-(2)-MhL. J.-617, Shivdas S/o Dodku Borker V/s. District and Session Judge, Nagpur and another; 2012-(2)-Mh. L.J.-795. Madhukar V. Wagh V/s. Chief Executive Officer, Alibag and another.

On the other hand, the Advocate for First Party in support of his argument relied on the case law reported in 2011-III-CLR-38, NRC Limited V/s. NRC Employees Union; 2008-LAB-I.C.-415-SC, M/s. L & T Komatsu Ltd. V/s. N. Udayakumar; 2004-III-CLR-289-SC, Delhi Transport Corporation V/s. Sardar Singh.

Considering the ratio of the case law cited by Advocate for both parties and considering the facts of the present reference, I am passing final award in this matter.

9. The First Party contended in written statement that the present reference is not maintainable as it is not sponsored by the union or workmen. However, as present reference is u/s 2A r/w section 10 of the Industrial Disputes Act, 1947, as such the industrial dispute raised by the individual employee to challenge his dismissal is perfectly maintainable. Hence, the present reference is perfectly maintainable in the Tribunal.

10. Admittedly, the Second Party workman initially was on probation and during probation his work was not satisfactory. Hence, his probation period was extended time to time, and he was given one chargesheet dated 3-3-2003 in which allegations were made against him that he remained absent from 6-11-2000 to 15-3-2001 to 130 days, and thereafter enquiry was held. This Court by order on preliminary point on 5-3-2011 declared that enquiry held against the Second Party was just, legal and proper and further observed that as per enquiry report, misconduct is proved on the basis of evidence recorded

in the enquiry. Thus, now the only point which remains to be decided in this matter is about quantum of punishment. Thus in view of the order passed by this Court on preliminary point on 5-7-2011, Issue No. 3 does not survive at all. Hence, I answer issue No. 3 accordingly.

11. As I have already pointed out that misconduct of absenteeism was levelled against the Second Party workmen as per chargesheet dated 3-3-2003 for the period from 6-11-2000 to 15-3-2001 for 130 days and this absenteeism was admitted by the Second Party workman in the statement of claim as well as in this evidence and even in the domestic enquiry, as such the competent authority i.e. punishing authority inflicted the punishment of removal from services i.e. terminated his services by order dated 8-8-2003, thereafter, the Second Party workman preferred an appeal, the same was rejected. The Second Party admitted that warnings were given to him during probation period for the allegations that he was singing vulgar songs towards looking at the female staff members working in the office and also using filthy language to them. Though the Second Party contended that after the period of two years chargesheet was given to him but on the background of his probation period which was extended time to time, in my opinion, the First Party was justified giving an opportunity to the Second Party workman for taking action against him for absenteeism even after two years. Considering the absenteeism of the Second Party was for 130 days which was unauthorised absenteeism of the Second Party from duties, in my opinion, the punishment awarded to him is just, legal and proper and no lineancy can be shown to the Second Party in exercise of the powers conferred U/s 11-A of the Industrial Disputes Act, 1947 to this Tribunal. The Second Party failed to establish that termination of his services is illegal and improper. Hence, I answer Issue No. 4 in the negative.

12. In view of my finding on above issues, I have no hesitation to hold in this matter that action of the First Party - The Oriental Insurance Company Limited in initiating disciplinary action after lapse of more than two years and dismissing Second Party for his absenteeism is legal and justified, hence, the Second Party workman is not entitled for any reliefs. Hence, the reference is liable to be rejected. In view of this I answer issue No. 5 and 6 accordingly and proceed to pass the following award:

AWARD

1. The Reference (IT) No. 41/2005 stands rejected.
2. No order as to costs.
3. Copies of this award be sent of appropriate Government for necessary action.

M.G. CHOUDHARY, Presiding Officer

Pune

Date: 17-07-2012

नई दिल्ली, 25 सितम्बर, 2012

का. आ. 3203.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 61/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार 25.09.2012 को प्राप्त हुआ था।

[सं. एल-12012/91/2008-आई आर (बी-1)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 25th September, 2012

S.O. 3203.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 61/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the management of State Bank of India, and their workmen, received by the Central Government on 25-09-2012.

[No. L-12012/91/2008-IR(B-I)]

Ramesh Singh, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, BHUBANESWAR

PRESENT:

Shri J. Srivastava, Presiding Officer, CGIT-cum-Labour Court, Bhubaneswar

Industrial Dispute Case No. 61/2008

Date of Passing Award-10th September, 2012

Between :

The Asstt. General Manager,
State Bank of India, Bapujinagar
Branch, Dist. Khurda, (Orissa),
Bhubaneswar (Orissa).

...1st Party-Management

(And)

Their workman Shri Pabitra Mohan Pradhan,
Qr. No. VR-5/1, Kharvela Nagar, Unit-3,
Bhubaneswar (Orissa)

...2nd Party-Workman.

APPEARANCES:

Shri Alok Das, ... For the 1st Party-
Authorized Management
Representative

None. ... For the 2nd Party-
Workman.

AWARD

The Government of India in the Ministry of Labour has referred the present dispute existing between the employers in relation to the Management of State Bank of India and their workman under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 *vide* Letter No. L-12012/91/2008-IR (B-I), dated 06-10-2008 to this Tribunal for adjudication to the following effect :

"Whether the action of the management of State Bank of India, Main Branch, Bhubaneswar, in terminating the services of Sri Pabitra Mohan Pradhan w.e.f. 30-9-2004 without complying the provisions of the I.D. Act, 1947, is legal and justified? If not, to what relief is the workman concerned entitled?"

2. The 2nd Party-Workman has filed his statement of claim alleging that he had joined his services as a Messenger on 03-11-1991 after succeeding in interview. He was assured to get permanent appointment order after one year or on completion of 240 days, work in a calendar year, but despite completion of several years of continuous satisfactory service and putting in more than 240 days' work in each year he was not regularized, instead terminated and refused employment from 30-9-2004 by the 1st Party-Management without any written communication or payment of compensation. The 1st Party-Management in refusing employment to him violated all principles of natural justice and mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947. He therefore brought the matter into the notice of the C.G.M. and C.D.O. of the State Bank of India, L.H.O., Bhubaneswar. But on hearing nothing, he raised an industrial dispute before the Regional Labour Commissioner (Central) *Vide* his letter dated 25-10-2007. Conciliation proceedings were started, but they failed and thereupon a failure report was submitted to the Government and the Government made the present reference. He is thus entitled to get full back wages and reinstatement with continuity of service with effect from 30-9-2004.

3. The 1st Party-Management in its reply through written statement has stated that the present dispute is misleading and misconceived in as much as the 2nd Party-workman had already raised a similar dispute along with 124 other workers through the State Bank of India Temporary 4th Grade Employees Union before the Assistant Labour Commissioner (Central), Bhubaneswar challenging their alleged termination of service by the 1st Party-Management. In the said dispute the failure report was sent by the Asst. Labour Commissioner (Central), Bhubaneswar to the Ministry of Labour who in turn referred the matter to this Tribunal for adjudication and the same is pending before this Tribunal being I.D. Case No. 7/2007. The name of the 2nd Party-workman is appearing at Sl. No. 11 in Annexure-A to the said reference. Thus, raising a common dispute for same cause of action and again raising individual dispute

for same relief is nothing but an abuse of the process of law and amounts to multiplicity of litigation. The Asst. Labour Commissioner (Central) while conciliating the individual disputes disregarded the direction of the Deputy Chief Labour Commissioner (Central) not to take any further action on the separate disputes raised by the same workers for the same cause of action. The allegation of the 2nd Party-workman that he had joined the Bank on 3-11-1991 and he was discontinued from service on 30-9-2004 is not correct. He was engaged intermittently on temporary/daily wage basis due to exigencies of work. When his services were no more required he was not engaged further. It is further denied that he was performing his duties with all sincerity and honesty and to the best of satisfaction of the Authority. The 2nd Party-workman has neither completed several years of continuous service in the Bank nor he has completed 240 days of continuous service in any calendar year preceding the date of his alleged termination. In order to give an opportunity for permanent absorption to the ex-temporary employees/daily wagers in the Bank in view of the various settlements entered into between the All India State Bank of India Staff Federation and the Management of the State Bank of India all eligible persons were called for interview and those succeeded were appointed as per panel till 31-3-1997. But the Union or the 2nd Party-workman has never challenged the implementation of the settlement which has now gained finality. It is further submitted that some of the wait-listed candidates, who could not be absorbed in the Bank's service due to expiry of the panel on 31st March, 1997, filed Writ Petitions before the Hon'ble High Court of Orissa. But the Hon'ble High Court of Orissa by a common order dated 15-5-1998 passed in O.J.C. No. 2787/1997 dismissed a batch of Writ Petitions and upheld the action of the Management of the Bank. This order of the Hon'ble High Court was also upheld by the Hon'ble Supreme Court of India in S.L.P. No. CC-3082/1999. Hence the above matter has attained finality and cannot be re-agitated. Since the services of Sri Pradhan were discontinued much earlier to 30-9-2004 i.e. on 9-8-1998 his claim has become stale by raising the dispute after nine years. It is a settled principle of law that delay destroys the right to remedy. Thus the present dispute is liable to be rejected on the above grounds.

4. On the pleadings of the parties following issues were framed:—

ISSUES

1. Whether the present reference of the individual workman during the pendency of the I.D. Case No. 7/2007 before this Tribunal on the same issue is legal and justified?
2. Whether the workman has worked for 240 days as required under section 25-F of the Industrial Disputes Act?
3. Whether the action of the Management of State Bank of India, Bhubaneswar Main Branch, Bhubaneswar in terminating services of Shri Pabitra Mohan Pradhan, w.e.f. 30-9-2004 is fair, legal and justified?
4. To what relief is the workman concerned entitled?
5. The 2nd Party-workman despite giving sufficient opportunity did not produce any evidence either oral or documentary in support of his claim and willingly kept himself out of the proceedings at the stage of evidence by absenting himself or his Union representative.
6. The 1st Party-Management has adduced the oral evidence of Shri Abhay Kumar Das as M.W.-1 and filed documents marked as Ext.-A to Ext.-J in refutation of the claim of the 2nd Party-workman.

FINDINGS

ISSUE NO. 1

7. A specific plea has been raised by the 1st Party-Management that a group of 125 employees including the 2nd Party-workman had already raised a similar dispute in I.D. Case No. 7/2007 before this Tribunal for the same relief which is pending for adjudication. The dispute as referred to in I.D. Case No. 7/2007 is given below for comparison with the dispute in the present case:—

Whether the action of the Management of State Bank of India, Orissa Circle, Bhubaneswar in not considering the case of 125 workmen whose details are in Annexure-A for re-employment as per Section 25(H) of Industrial Disputes Act, 1947 is legal and justified? If not, what relief the workmen are entitled to?

8. The name of the 2nd party-workman appears at Sl. No. 11 in Annexure-A to the above reference. In both the cases the matter of disengagement or so called retrenchment is involved to be considered in one or the other way and the relief claimed is with regard to re-employment. But challenge has been made more specifically against the termination of service of the 2nd Party-workman in the present case while in I.D. Case No. 7/2007 prayer has been made with regard to consideration of the case of 125 workmen for re-employment as per Section 25-H of the Industrial Disputes Act, 1947. In fact, in the latter case the workmen have submitted or virtually surrendered to their cessation of employment or alleged termination, whereas in the present case they have challenged their termination on facts and law. Virtually in the present case validity and legality of the alleged termination has to be tested at the alter of facts and legal propositions. Therefore it cannot be said that the issues involved in both the cases are same. This case can proceed despite pendency of I.D. Case No. 7/2007 and the present reference by the individual workman

pending for adjudication is maintainable being legal and justified. This issue is therefore decided in the affirmative and against the 1st Party-Management.

ISSUE NO. 2

9. The onus to prove that the 2nd Party-workman has completed one year or 240 days of continuous service during a period of 12 calendar months preceding the date of his alleged termination or disengagement from service lies on him, but the 2nd Party-workman has not adduced any evidence either oral or documentary in support of his contention. He has only alleged in his statement of claim that he had joined the service in the year 1991 and worked till 30.9.2004 on temporary/casual/daily wage basis, but he has not filed any certificate or reliable document showing the break-up of year-wise service rendered by him under the 1st Party-Management during the above period. The 1st Party-Management, on the other hand, has alleged that the 2nd Party-workman was engaged intermittently on temporary/daily wage basis due to exigencies of work and he had never completed 240 days continuous service in a calendar year.

M.W.-1 Shri Abhaya Kumar Das in his statement before the Court has stated that "The disputant was working intermittently for few days in our Branch on daily wage basis in exigencies.....He had not completed 240 days of continuous and uninterrupted service preceding the alleged date of the termination". He has denied the allegation that the workman was discontinued from service with effect from 30-09-2004, but has stated that "In fact the workman left working in the Branch on 9-8-1998." The 2nd Party-workman has to disprove the evidence led by the 1st Party-Management, but he has not come before the Court to give evidence. A temporary or daily wage worker has not right to claim reinstatement and particularly when such an employee had not worked for 240 days continuously during a period of 12 calendar months preceding the date of his so-called termination. Thus he is not entitled to get benefit of Section 25-F of the Industrial Disputes Act, 1947. This issue is hereby decided against the 2nd Party-workman for failing to prove that he had worked for 240 days continuously during a period of 12 calendar months preceding the date of his disengagement or alleged termination from service.

ISSUE NO. 3

10. Since the 2nd Party-workman could not prove that he had rendered 240 days continuous service under the 1st Party-Management during a period of 12 calendar months preceding the date of his disengagement or alleged termination, he is not entitled for re-employment even in case of his alleged illegal and arbitrary termination. Moreover, he was a temporary/casual/daily wage employee. His services can be terminated at any time without assigning any cause by the 1st Party-Management.

He has no legal right to be retained in service for the extended period, if he was appointed for a certain period or when no time is specified. The 2nd Party-workman has not filed any letter of appointment or proof of having rendered service under the 1st Party-Management for a specified period against a regular post. The 1st Party-Management has further alleged that in time of exigencies only the 2nd Party-workman was employed. It means that with the end of exigencies his job also came to an end. In view of the matter the action of the management of State Bank of India, Main Branch, Bhubaneswar in terminating the services of Sri Pabitra Mohan Pradhan with effect from the alleged date of his termination is fair, legal and justified. This issue is accordingly decided in the affirmative and against the 2nd Party-workman.

ISSUE NO. 4

11. In view of the findings recorded above under Issues No. 2 and 3, the 2nd Party-workman is not entitled to any relief whatsoever claimed.

12. Reference is answered accordingly.

Dictated & Corrected by me.

JITENDRA SRIVASTAVA, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2012

का.आ. 3204.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट (संदर्भ संख्या 35/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-09-2012 को प्राप्त हुआ था।

[सं. एल-22012/149/2002-आई आर (सी-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 25th September, 2012

S.O. 3204.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 35/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of WCL and their workman, which was received by the Central Government on 25-09-2012.

[No. L-22012/149/2002-IR(C-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

**BEFORE SHRI J.P. CHAND, PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT, NAGPUR**

Case No. CGIT/NGP/35/2004 Date : 14.09.2012.

- Party No. 1 : The General Manager,
Central Workshop Tadali of WCL,
Post-Tadali
Chandrapur (M.S.)
Versus
Party No. 2 : Shri P.B. Waghamare, President,
Lal Zanda Coal Mines Mazdoor Union
(CITU), Br. Central Workshop Tadali,
Post-Tadali, Chandrapur (MS).

AWARD

(Dated : 14th September, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Central Workshop Tadali of WCL and their workman, Shri Trilesh Mallaiya Gumpalwar, for adjudication, as per letter No. L-22012/149/2002-IR (CM-II) dated 23-02-2004, with the following schedule :—

"Whether the management of M/s. Western Coalfields Ltd. in relation to its Central Workshop, Post Tadali Distt. Chandrapur represented by the Chief General Manager is justified in denying regularization of the workman Shri Trilesh Mallaiya Gumpalwar in the post of Clerk, Grade-III with retrospective effect i.e. from 01-07-1999 in the pay scale of Rs. 1826-60-2666 as it stood on that date (Subsequently revised to Rs. 3545-87-5111 effective from 01.07.1999 as per NCWA-VI) with all consequential monetary and other benefits? If not, to what relief the workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the union, Lal Zanda Coal Mines Mazdoor Union (CITU) ("the Union" in short), filed the statement of claim on behalf of the workman, Shri Trilesh Mallaiya Gumpalwar ("the workman" in short) and the management of Western Coalfields Ltd. ("Party No. 1" in short) filed its written statement.

In the statement of claim, it was claimed by the union to regularize the workman in Clerical Grade-III w.e.f. 01.07.1999 in view of the regularization order dated 28/29-08-1999.

3. In the written statement, the Party No. 1 pleaded *inter alia* that the workman is not entitled for any relief.

4. On 14.09.2012, the case was fixed for filing of rejoinder if any and evidence on affidavit from the side of the workman. Instead of filing the rejoinder, the workman filed a pursis stating therein that he is not interested to prosecute

the matter. The workman also filed another application in person stating that he is not interested in prosecuting the reference and he has already withdrawn the authorization given in favour of the union. Copies of the application and pursis were served on the advocate for the management.

5. Perused the records. As the workman himself does not want to proceed with the reference, it is necessary to pass a "no dispute" award. Hence, it is ordered:

ORDER

The reference be treated as "no dispute" award. The workman is not entitled to any relief. The pursis filed by the advocated for the workman and the application filed by the workman be treated as part of the award.

J.P. CHAND, Presiding Officer

BEFORE THE CGIT, NAGPUR**CGIT/NGP/35/2004**

Central Workshop, Tadali Ruksana

Vs.

I.Z.C.M.M.U.

PURSIS

In this matter the Party No. 2 Union has informed the counsel that the workman Shri Trilesh Mallaiya Gumpalwar has intimated to the union in writing that he is not interested to prosecute the matter in the current proceeding.

Hence this pursis.

Nagpur

Counsel for the Party no. 2 (Union)

Dated : 14-09-2012

मैं इस केस को आगे नहीं बढ़ाना चाहता हूँ।

Signature of Workman

(TRILESH GUMPALWAR)

ANNEXURE**BEFORE THE HON'BLE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL, NAGPUR****Ref. Case No. 35/2004**

Party No. 1: The General Manager,
Central Workshop Tadali,
Western Coalfields Ltd.,
Post-Tadali, Distt. Chandrapur

Versus

Party No. 2: Shri P.B. Waghamare,
Lal Zanda Coal Mines Mazdoor Union

Applicant : Trilesh Mallaiya Gumpalwar

PURSIS

The Party No. 2 most respectfully begs to submit as under:

1. That the present reference has been initiated by the party no. 2 union on behalf of the applicant mentioned herein above. The present reference has been remanded back to this Hon'ble Tribunal for fresh adjudication, by the Hon'ble High Court.

2. That the applicant in the year 2004 had asked the Party No. 2 union that he is not desirous of contesting the present reference any further and hence the union should withdraw the same and the fact that the reference has been withdrawn was communicated to the Party No. 1-management in the year 2004 itself and accordingly neither the party no. 1 nor the party no. 2 had attended the case till passing of the award.

3. That even after passing off the award the applicant had issued the letter dt. 22-3-2011 pointing that he had already requested the part no. 2 — union to withdraw the reference in the year 2004.

4. That the applicant was not served with the copy of writ petition of the Hon'ble High Court and the applicant was also not aware about the outcome of the said petition.

5. Be that as it may as I have got two promotions after my conversion into Grade III and as now I am working in Grade I. I once again confirm that I am not interested in prosecuting the reference any further and the same may be closed as such.

6. I further state that I have also withdrawn the authorization given to the part no. 2 — union to prosecute the present reference.

7. Hence this Pursis.

Nagpur

Dt. 14-09-2012

(Trilesh Gumpalwar)

Store Keeper

नई दिल्ली, 25 सितम्बर, 2012

का.आ. 3205.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ.सी.आई. के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या 76/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-09-2012 को प्राप्त हुआ था।

[सं. एल-22012/360/2002-आई आर (सीएम-II)]

बी.एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 25th September, 2012

S.O. 3205.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 76/2008)

of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the Industrial Dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 25-09-2012.

[No. L-22012/360/2002-IR(CM-II)]

B.M. PATNAIK, Section Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, LUCKNOW****PRESENT :**

Dr. MANJU NIGAM, Presiding Officer

I.D. No. 76/2008

Ref. No. L-22012/360/2002-IR (CM-II) dated 11-07-2003

BETWEEN

The Joint Secretary
Food Corporation of India Workers Union
58/1, Diamond Harbour Road,
Kolkata-700023

AND

The Sr. Regional Manager
Food Corporation of India
5-6, Habibullah Estate
Hazratganj
Lucknow-226001

AWARD

1. By order No. L-22012/360/2002-IR (CM-II) dated 11-07-2003 and its subsequent corrigendum dated 31-07-2007 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the Joint Secretary, Food Corporation of India Workers Union, 58/1, Diamond Harbour Road, Kolkata and the Sr. Regional Manager, Food Corporation of India, 5-6, Habibullah Estate, Hazratganj, Lucknow for adjudication.

2. The reference under adjudication is :

“Whether the action of the management of Food Corporation of India, Lucknow in not providing employment to next kins of workers (list enclosed) already retired on submission of their application on medical grounds is legal and justified? If not, to what relief they are entitled?”

3. The case of the workman's union, in brief, is that 30 handling labours of Food Storage Depot, Azamgarh

submitted applications for appointment of their sons on compassionate ground on the basis of circular of Food Corporation of India, hereinafter referred to as FCI, dated 03-07-96, which provide recruitment procedure of appointment of next kin of departmental workers who seek premature retirement on medical ground at their own request. It has been submitted that out of those, claim of 09 workmen has been rejected. It has been submitted by the workman's union that it had been provided vide circular dated 03-07-96 that the worker who seeks voluntary retirement on medical grounds should apply within age limit of 55 years for the purpose of availing benefit of compassionate appointment and also provided different conditions. It is stated that all the conditions had been fulfilled by the claimants and they applied within the 55 years of age and the management on the one hand accepted premature retirement and on the other they rejected the claim of appointment of next kin for which circular was issued. Accordingly, it has been prayed by the workman's union that directions be issued to the management to provide appointment to the next kin of the workmen and they be paid salary and other benefits for that period as they have been prematurely retired and affected service of five years.

4. The above claim of the workman's union has been opposed by the management of FCI by filing its written statement; whereby it has submitted that it has conducted itself in purely bonafide manner in rejecting the appointment on compassionate ground of next kin of claimant workers who had applied for voluntary retirement on medical ground in wake of circular dated 03-07-97. It has been submitted by the FCI that the applications submitted by the claimant workmen did not fulfill the conditions given in the circular dated 03-07-96. Moreover, none of the claimant had applied within the age limit of 55 years and also did not fulfill other necessary conditions given in the circular dated 03-07-96 as such; their respective applications for appointment of their next kin on compassionate ground were rightly rejected. Hence the management has prayed that the claim of the workman's union be rejected without any relief to the workman concerned.

5. The workman's union has filed its rejoinder; wherein it has not brought any new fact apart from reiterating the averments already made by it in its statement of claim.

6. The parties filed documentary proof in support of their respective claim. The workman's union examined its Vice-President, Shri M.C. Parida and Shambhu Prasad S/o of workman Ram Das whereas the management examined Shri Ashok Kumar, Area Manager in support of their respective claim. The parties cross-examined the witnesses of each other and availed opportunity for oral submissions.

7. Heard representatives of the parties and scanned entire evidence on record.

8. The list of the workmen, enclosed with the reference order, contains names of as many as 30 workman; but during the pendency of the case before this Tribunal the authorized representative of the workman made a statement in writing, paper No. C-26, that all the workers for whom the matter was referred for adjudication have settled their dispute with the FCI and they have been appointed by the FCI except one viz. Shambhu Prasad s/o Ram Das; accordingly, at present this Tribunal has to adjudicated the matter in respect of workman Ram Das whose name finds its reference at serial no. 12 of list enclosed with reference order.

9. The authorized representative of the workman's union has argued that the management of FCI has adopted unfair labour practice as on one hand they retired the workman prematurely and on the other hand rejected claim of appointment of their next kin without any basis whereas some of them were appointed by the management in the wake of orders of Hon'ble High Court, relaxing the eligibility criteria. He has put emphasis over the annexure-II, filed with the evidence of the management, paper No. 45/9; wherein in the detail of nine workers, whose case had been espoused in the present industrial dispute had been provided. It has been contended by the representative of the workman that the management's version is that the workman moved application for premature retirement on medical ground and appointment of their next kin after attaining age of 55, which was mandatory in the circular dated 03-07-96; and it is evident from the details of the workmen in paper No. 45/9 that all the nine workmen moved the application after attaining the age of 55; but the management appointed the next kins of all 08 workmen out of them and spared only Shamboo Prasad S/o Ram Das; which is unjustified.

10. Per contra, the authorized representative of the management has contended that the application of the workman was rightly rejected by the management and has further contended that in compliance of Hon'ble High Court, Allahabad order dated 17-10-2003 in W.P. No. 10452/03 and order dated 17-3-2004 passed in contempt case no. 793/04, case of Shri Suraj Bali for the appointment of his son Shri Virendra Kumar on compassionate ground, was re-examined in the light of the Hqr. circular dated 17-12-1997. In the said circular, it was provided that the dependents of those departmental workers who have already applied for retirement on medical ground within age of 56 years at the time of application up to 01-10-97 may be considered for compassionate appointment. Therefore, the Competent Authority had given the appointment to Shri Virendra Kumar S/o Shri Suraj Bali on compassionate ground. Further, submitted that the cases of remaining 07 workers were considered in the light of

aforesaid orders passed by the Hon'ble High Court, Allahabad wherein the Court had stated if the applications have been received before attaining the age of 55 years their case may be considered even if the medical certificates were not enclosed along with it. As such after re-examination of initial application of remaining 08 workers, it was observed that out of 08 workers 07 of them had applied for voluntary retirement on medical ground and requested for appoint of their sons on compassionate ground within the age of 55 years; accordingly, 07 workers were given appointment on compassionate ground, leaving son of Ram Das. The authorized representative of the management has relied on the paper No. 22/9, which is details of appointment of 08 workers and the same is given hereunder:

1. S/Sh. Shiv Nath	Dt. of application Dt. of birth Age on the date of application	1-1-99 2-3-44 54Yrs. 11 Months 29 days
2. Shiv Darshan	Dt. of application Dt. of birth Age on the date of application	28-5-1998 4-6-1943 54 Yrs. 11 months 24 days
3. Ram Naresh (Gang No. 11)	Dt. of application Dt. of birth Age on the date of application	19-1-1998 14-2-1943 54 Yrs. 11 months 05 days
4. Chhedi Lal	Dt. of application Dt. of birth Age on the date of application	20-9-1997 24-4-1943 54 Yrs. 04 months 26 days
5. Mewa Lal	Dt. of application Dt. of birth Age on the date of application	20-5-1998 11-6-1943 54 Yrs. 11 months 09 days
6. Sahdeo	Dt. of application Dt. of birth Age on the date of application	25-1-1997 02-1-1943 54 Years 23 days
7. Narain	Dt. of application Dt. of birth Age on the date of application	18-2-1999 3-4-1944 54 Yrs. 10 months 15 days
8. Ram Dass	Dt. of application Dt. of birth Age on the date of application.	0-2-1998 3-2-1943 55 Years 07 days

REJECTED

However, the above document, paper No. 22/9, which is Annexure No. 3 is not much relevant as Hukum Singh was not produced for cross-examination.

11. I have given thoughtful consideration to the rival contentions of the parties and perused evidence in light thereof.

12. It is admitted case of the parties that the workman, Ram Das submitted application for appointment of his son on compassionate ground on the basis of circular of FCI

vide dated 03-07-1996; whereby the workers seeking voluntary retirement on medical ground were ought to apply within the age limit of 55 years for the purpose of availing the benefits of compassionate ground appointment to their kins and the workman with other 29 workmen applied for the same. When the case was referred by the appropriate Government to this Tribunal for adjudication, only next kins of 09 of them were to be given appointment and grievances of rest 21 workmen were settled by the management of FCI; and accordingly, claim statement for extending relief to 09 workmen was filed before this tribunal. During pendency of the case, the management re-examined the applications of the 09 remaining workmen in light of orders of Hon'ble High Court, Allahabad and consequent circular dated 17-12-1997 and appointed 08 of them, leaving Shambhoo Prasad S/o Ram Dass.

13. The crux of the case is that the management of FCI vide their circular dated 03-07-1996, circulated the recruitment procedure for appointment of next kin of departmental workers who seek retirement on medical ground at their own request in relaxation of the procedure of getting sponsored from employment exchange; wherein apart from other conditions it was necessary for a workman, seeking benefit of the said circular should apply within the age limit of 55 years. Later on when one of the workman approached Hon'ble High Court, Allahabad, then Hon'ble High Court vide its order dated 17-10-2003 in W.P. No. 10452/03 and order dated 17-3-2004 passed an order in contempt case no. 793/04, in the case of Shri Suraj Bali for the appointment of his son Shri Virendra Kumar on compassionate ground, the applications of Virendra Kumar was re-examined in the light of the Hqr. circular dated 17-12-1997. Later, the applications of 07 other workmen were also re-examined in the light of circular dated 17-12-1997 and their kins were appointed on compassionate ground leaving Shambhoo Prasad S/o Ram Das.

The FCI's Hqr circular No. IR(L)/31(15)/96 dated 17-12-1997 is worth material for proper adjudication of this case. The relevant portion of the said circular is reproduced hereunder:

“As regards the demand for relaxation in age limit of 55 years, it was agreed that the applications already received up to 1-10-97 from the departmental workers who had sought retirement on medical grounds, for compassionate appointment of their dependents, will be considered upto the age limit of 56 years instead of 55 years of such departmental workers, for the benefit of appointment of next kin of such departmental workers. In other words, the dependents of those departmental workers who have already applied for retirement on medical grounds within the age of 56 years at the time of application up to 1-10-97, may be considered for compassionate appointment. As such, the condition of age limit of 55 years has

been relaxed up to 56 years in those cases whose applications were received up to 1-10-97 only. The other terms and conditions shall remain unchanged as circulated in various Circulars of Headquarters including dated 3-7-96.....It means that in case of the applications received from departmental labourers for retirement on medical ground and compassionate appointment of their dependent after 1-10-97 onwards, the condition of age limit of 55 years shall be strictly followed along with other terms and conditions.”

This goes to show that initially the age limit for making an application for voluntary retirement on medical grounds and compassionate appointment of a kin was 55 years vide circular dated 03-07-96, which was later extended to 56 years only in those cases where such application was moved upto 01-10-97 and in cases where the application for voluntary retirement on medical grounds was moved after 01-12-97 the age limit was 55 years.

The paper No. 45/9 on record, which is Annexure-II to the affidavit of the management witness, Shri Ashok Kumar, Area Manager, is the details of 09 whose has initially been espoused in the present dispute and during pendency kins of 08 out of them were given appointment on compassionate ground. The relevant columns of the said annexure is given hereunder :

S. No.	Name of the employee	Name of sons	Date of application	Age on date of application
1.	Shiv	Gulab Singh	28-5-98	55 Yrs. 2 months 24 days
2.	Ram Das	Shamboo Pd.	10-2-98	55 Yrs. 7 days
3.	Shahdeo	Ram Singh	25-01-99	55 Yrs. 23 days
4.	Ram Naresh	Next kin already appointed		
5.	Mewa Lal	Hari Prasad	N.A	On the date of Med. Examinations 55 Yrs. 5 months 26 days
6.	Suraj Bali	Birendra Kumar	8-8-97	55 years 5 months 20 days.
7.	Shiv Nath	Ram Prakash	N.A.	On dt. of M/Exm. 55 Yrs. 10 months 02 days

8.	Chhedi Lal	Indra Pal Gautam	20-9-99	55 Years 4 months 26 days
9.	Narayan	Hari Lal	18-2-99 31-12-99	55 Yrs 08 months 28 days on 31-12-99.

The management witness has stated that the claim of Shamboo Prasad is not sustainable as application for appointment on compassionate ground was moved by Ram Das attaining the age of 55 years. In cross-examination he stated that application for compassionate appointment of those 07 workers who were given appointment was moved before attaining the age of 55 years by their respective fathers. He stated the names of said 07 workers whose name finds reference in the Annexure-II of his affidavit.

14. From bare perusal of Circular dated 17-12-97 it becomes apparent that age relaxation of 56 years was available to those who preferred the application for voluntary retirement and compassionate appointment upto 01-10-97 only; also Hon'ble High Court Allahabad underlined this relaxation whereas for the applicants who applied after 01-10-97 it was mandatory that they should have applied within the age of 55 years; but on going through Annexure-II to the Affidavit of the management witness, paper No. 45/9 it comes out that none of the 08 workmen moved application up to 01-10-97 even then they were given appointment in spite of the fact that they had crossed the mandatory age of 55 years and the age relaxation of 56 was not available to them.

15. Thus, from above chart which is annexed with affidavit of Shri Ashok Kumar, Area Manager of FCI it is apparent that all the 08 workmen's kins who have been given appointment on the compassionate ground, and the workmen whose names find reference in Annexure-II of the affidavit of the Management witness, paper No. 45/9 had applied after 01-10-97 and all of them had crossed the age of 55 years; accordingly the age relaxation provided vide circular dated 17-12-97 was not available to them, even then the management not only considered their application but also given compassionate appointment to their kins, sparing Shamboo Prasad S/o Ram Dass who had attained age of 55 years 7 days only on the date of application whereas all the other workmen who had applied for the appointment on compassionate ground were, on the date of application, crossed the more age than Ram Das.

16. Therefore, in view of the discussions made above, I am of the considered opinion that the action of the management of Food Corporation of India, Lucknow in not providing employment to Shamboo Prasad, the next kin of Ram Das, already retired on submission of application on medical ground is neither legal nor justified.

17. Accordingly, the reference is adjudicated against the management of Food Corporation of India, and as such, I come to the conclusion that the workman, Ram Das is entitled for appointment of his kin Shamboo Prasad from the date the workman Ram Das retired with consequential benefits.

18. Award as above.

Lucknow. Dr. MANJU NIGAM, Presiding Officer
4-09-2012.

नई दिल्ली, 25 सितम्बर, 2012

का.आ. 3206.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, भुवनेश्वर के पंचाट (संदर्भ संख्या 24/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-09-2012 को प्राप्त हुआ था।

[सं. एल-12012/14/2008-आईआर(बी-1)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 25th September, 2012

S.O. 3206.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 24/2008) of the Central Govt. Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the management of State Bank of India, and their workmen, received by the Central Government on 25-09-2012.

[No. L-12012/14/2008-IR(B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, BHUBANESWAR

Present :

Shri J. Srivastava,
Presiding Officer, C.G.I.T.-cum-
Labour Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 24/2008

Date of Passing Award-12th September, 2012

Between :

The Branch Manager,
State Bank of India,
Banki Branch, At./Po. Banki,
Dist. Cuttack.

... 1st Party-
Management

(And)

Their workman Sri Dinabandhu Das,
Qr. No. VR-5/1, Kharvela Nagar, Unit-3,
Bhubaneswar. (ORISSA)

... 2nd Party-Workman

Appearances :

Shri Alok Das, ... For the 1st Party-
Authorized Representative Management
None. ... For the 2nd Party
Workman.

AWARD

The Government of India in the Ministry of Labour has referred the present dispute existing between the employers in relation to the Management of State Bank of India and their workman under clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 vide Letter No. L-12012/14/2008-IR (B-I), dated 13-05-2008 to this Tribunal for adjudication to the following effect :

“Whether the action of the management of State Bank of India, Banki Branch in terminating the services of Sri Dinabandhu Das, Ex-workman w.e.f. 30-9-2004 without complying the provisions of the ID Act, is legal and justified? To what relief is he entitled?”

2. The 2nd Party-Workman has filed his statement of claim alleging that he had joined his services as a Messenger on 01-01-1984 after succeeding in interview. He was assured to get permanent appointment order after one year or on completion of 240 days' work in a calendar year, but despite completion of several years of continuous satisfactory service and putting in more than 240 days' work in each year he was not regularized, instead terminated and refused employment from 30-9-2004 by the 1st Party-Management without any written communication or payment of compensation. The 1st Party-Management in refusing employment to him violated all principles of natural justice and mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947. He therefore brought the matter into the notice of the C.G.M. and C.D.O. of the State Bank of India, L.H.O., Bhubaneswar. But on hearing nothing, he raised an industrial dispute before the Regional Labour Commissioner (Central) vide his letter dated 25-02-2005. Conciliation proceedings were started, but they failed and thereupon a failure report was submitted to the Government and the Government made the present reference. He is thus entitled to get full back wages and reinstatement with continuity of service with effect from 30-9-2004.

3. The 1st Party-Management in its reply through written statement has stated that the present dispute is misleading and misconceived in as much as the 2nd Party-workman had already raised a similar dispute along with

124 other workers through the State Bank of India Temporary 4th Grade Employees Union before the Assistant Labour Commissioner (Central), Bhubaneswar challenging their alleged termination of service by the 1st Party-Management. In the said dispute the failure report was sent by the Asst. Labour Commissioner (Central), Bhubaneswar to the Ministry of Labour who in turn referred the matter to this Tribunal for adjudication and the same is pending before this Tribunal being I.D. Case No. 7/2007. The name of the 2nd Party-workman is appearing at Sl. No. 119 in Annexure-A to the said reference. Thus, raising a common dispute for same cause of action and again raising individual dispute for same relief is nothing but an abuse of the process of law and amounts to multiplicity of litigation. The Asst. Labour Commissioner (Central) while conciliating the individual disputes disregarded the direction of the Deputy Chief Labour Commissioner (Central) not to take any further action on the separate disputes raised by the same workers for the same cause of action. The allegation of the 2nd Party-workman that he had joined the Bank on 01-01-1984 and he was discontinued from service on 30-9-2004 is not correct. He was engaged intermittently on temporary/daily wage basis due to exigencies of work. When his services were no more required he was not engaged further. It is further denied that he was performing his duties with all sincerity and honesty and to the best of satisfaction of the Authority. The 2nd Party-workman has neither completed several years of continuous service in the Bank nor he has completed 240 days of continuous service in any calendar year preceding the date of his alleged termination. In order to give an opportunity for permanent absorption to the ex-temporary employees/daily wagers in the Bank in view of the various settlements entered into between the All India State Bank of India Staff Federation and the Management of the State Bank of India all eligible persons including the 2nd Party-workman were called for interview in the year 1993 and those succeeded were appointed as per panel till 31-3-1997. As the 2nd Party-workman did not succeed in the interview, he could not be appointed in the Bank. But the Union or the 2nd Party-workman has never challenged the implementation of the settlement which has now gained finality. It is further submitted that some of the wait-listed candidates, who could not be absorbed in the Bank's service due to expiry of the panel on 31st March, 1997, filed Writ Petitions before the Hon'ble High Court of Orissa. But the Hon'ble High Court of Orissa by a common order dated 15-5-1998 passed in O.J.C. No. 2787/1997 dismissed a batch of Writ Petitions and upheld the action of the Management of the Bank. This order of the Hon'ble High Court was also upheld by the Hon'ble Supreme Court of India in S.L.P. No. CC-3082/1999. Hence the above matter has attained finality and cannot be re-agitated. Since the services of Sri Das were discontinued much earlier to 30-9-2004 his claim has become stale by raising the dispute after ten years. It is a settled principle of law that delay destroys the right to remedy.

Thus the present dispute is liable to be rejected on the above grounds.

4. On the pleadings of the parties following issues were framed:—

ISSUES

1. Whether the present reference of the individual workman during the pendency of the I.D. Case No. 7/2007 before this Tribunal on the same issue is legal and justified?

2. Whether the workman has worked for 240 days as enumerated under Section 25-F of the Industrial Disputes Act?

3. Whether the action of the Management of State Bank of India, Banki Branch, Bhubaneswar in terminating the services of Shri Dinabandhu Das, Ex-workman w.e.f. 30-9-2004 without complying the provisions of the I.D. Act, 1947 is legal and justified?

4. To what relief is the workman concerned entitled?

5. The 2nd Party-workman despite giving sufficient opportunity did not adduce any evidence either oral or documentary in support of his claim and willingly kept himself out of the proceedings at the stage of evidence by absents himself or his Union representative.

6. The 1st Party-Management has adduced the oral evidence of Shri Biswajit Mishra as M.W.-1 and filed documents marked as Ext.-A to Ext.-J in refutation of the claim of the 2nd Party-workman.

FINDINGS

ISSUE NO. 1

7. A specific plea has been raised by the 1st Party-Management that a group of 125 employees including the 2nd Party-workman had already raised a similar dispute in I.D. Case No. 7/2007 before this Tribunal for the same relief which is pending for adjudication. The dispute as referred to in I.D. Case No. 7/2007 is given below for comparison with the dispute in the present case—

Whether the action of the Management of State Bank of India, Orissa Circle, Bhubaneswar in not considering the case of 125 workman whose details are in Annexure-A for re-employment as per Section 25(H) of Industrial Disputes Act, 1947 is legal and justified? If not, what relief the workmen are entitled to?

8. The name of the 2nd Party-workman appears at Sl. No. 119 in Annexure-A to the above reference. In both the cases the matter of disengagement or so called retrenchment is involved to be considered in one or the other way and the relief claimed is with regard to re-

employment. But challenge has been made more specifically against the termination of service of the 2nd Party-workman in the present case while in I.D. Case No. 7/2007 prayer has been made with regard to consideration of the case of 125 workmen for re-employment as per Section 25-H of the Industrial Disputes Act, 1947. In fact, in the latter case the workmen have submitted or virtually surrendered to their cessation of employment or alleged termination, whereas in the present case they have challenged their termination on facts and law. Virtually in the present case validity and legality of the alleged termination has to be tested at the alter of facts and legal propositions. Therefore it cannot be said that the issues involved in both the cases are same. This case can proceed despite pendency of I.D. Case No. 7/2007 and the present reference by the individual workman pending for adjudication is maintainable being legal and justified. This issue is therefore decided in the affirmative and against the 1st Party-Management.

ISSUE NO. 2

9. The onus to prove that the 2nd Party-workman has completed one year or 240 days of continuous service during a period of 12 calendar months preceding the date of his alleged termination or disengagement from service lies on him, but the 2nd Party-workman has not adduced any evidence either oral or documentary in support of his contention. He has only alleged in his statement of claim that he had joined the service on 01-01-1984 and worked till 30-9-2004 on temporary/casual/daily wage basis, but he has not filed any certificate or reliable document showing the break-up of year-wise service rendered by him under the 1st Party-Management during the above period. The 1st Party-Management, on the other hand, has alleged that the 2nd Party-workman was engaged intermittently on temporary/daily wage basis due to exigencies of work and he had never completed 240 days continuous service in a calendar year. M.W.-1 Shri Biswajit Mishra in his statement before the Court has stated that "The disputant was working intermittently for few days in our Branch on daily wage basis in exigencies..... He had not completed 240 days of continuous and uninterrupted service preceding the alleged date of the termination". He has denied the allegation that the workman was discontinued from service with effect from 30-9-2004, but has stated that "In fact that workman left working in the Branch in 1991." The 2nd Party-workman has to disprove the evidence led by the 1st Party-Management, but he has not come before the Court to give evidence. A temporary or daily wage worker has no right to claim reinstatement and particularly when such an employee had not worked for 240 days continuously during a period of 12 calendar months preceding the date of his so-called termination. Thus he is not entitled to get benefit of Section 25-F of the Industrial Disputes Act, 1947. This issue is hereby decided against the 2nd Party-workman for failing to prove that he had worked for 240 days

continuously during a period of 12 calendar months preceding the date of his disengagement or alleged termination from service.

ISSUE NO. 3

10. Since the 2nd Party-workman could not prove that he had rendered 240 days continuous service under the 1st Party-Management during a period of 12 calendar months preceding the date of his disengagement or alleged termination, he is not entitled for re-employment even in case of his alleged illegal and arbitrary termination. Moreover, he was a temporary/casual/daily wage employees. His service can be terminated at any time without assigning any cause by the 1st Party-Management. He has no legal right to be retained in service for the extended period, if he was appointed for a certain period or when no time is specified. The 2nd Party-workman has not filed any letter of appointment or proof of having rendered service under the 1st Party-Management for a specified period against a regular post. The 1st Party-Management has further alleged that in time of exigencies only the 2nd Party-workman was employed. It means that with the end of exigencies his job also came to an end. In view of the matter the action of the management of State Bank of India, Banki Branch, Bhubaneswar in terminating the services of Sri Dinabandhu Das, ex-workman with effect from the alleged date of his termination is fair, legal and justified. This issue is accordingly decided in the affirmative and against the 2nd Party-workman.

ISSUE NO. 4

11. In view of the findings recorded above under Issues No. 2 and 3, the 2nd Party-workman is not entitled to any relief whatsoever claimed.

12. Reference is answered accordingly.

JITENDRA SRIVASTAVA, Presiding Officer.

नई दिल्ली, 25 सितम्बर, 2012

का.आ. 3207.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कर्नाटका बैंक लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बंगलौर के पंचाट (संदर्भ संख्या 57/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-09-2012 को प्राप्त हुआ था।

[सं. एल-12012/200/2003-आईआर (बी-1)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 25th September, 2012

S.O. 3207.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 57/2003)

of the Central Govt. Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of Karnataka Bank Limited and their workmen, which was received by the Central Government on 25-09-2012.

[No. L-12012/200/2003-IR(B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM-LABOUR COURT, BANGALORE

Dated : 3rd July, 2012

PRESENT

Shri S.N. Navalgund, Presiding Officer

C. R. No. 57/2003

IPARTY

Shri S.G. Goni,
H. No. 52,
Defence Colony,
Laxminagar, Ganeshpur,
Hindalga, Belgaum

II PARTY

The Chairman & Managing
Director, Karnataka Bank
Limited, P.B. No. 599
Head Office Complex,
Mahaveera Circle,
P.O. Kankanady,
Mangalore-575002

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section (1) and sub-section 2A of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) has referred this dispute vide order No. L-12012/200/2003-IR (B-I) dated 08-10-2003 for adjudication on the following Schedule :

SCHEDULE

“Whether the management of Karnataka Bank Limited is justified in dismissing the services of Shri S.G. Goni, Clerk? If not to what relief the workman is entitled?”

2. After receipt of the reference pursuant to the notices issued by this court the first party and the second party entered their appearance through their respective Advocates and filed the Claim Statement and Counter Statement.

3. My Learned Predecessor having regard to certain allegations made in the Claim Statement regarding fairness of the Domestic Enquiry formulated a preliminary issue as to **“Whether the Domestic Enquiry conducted against the first party by the second party is fair and proper”?** on 24-11-2005 and after receiving the evidence adduced by both

the sides and hearing the arguments addressed by the learned advocates by order dated 30-06-2011 the said issue came to be answered in the affirmative holding that the Domestic Enquiry conducted against the first party being fair and proper. Thereafter the arguments addressed by the learned advocates appearing for both the sides were heard on merits. The learned counsel appearing for the first party having regard to the fact that the CSE/first party had admitted the charges levelled against him before the enquiry officer and the charge against him was held proved did not address any arguments as to the validity of the finding of the enquiry officer and simply relying on the decision reported in 2009-CLR, Part III Page 645 Supreme Court of India in the case of Chairman-cum-Managing Director, Coal India Ltd., & Anr. Vs. Mukul Kumar Choudhuri & Ors urged that for the absence of 138 days the punishment imposed in dismissing the services of the first party is disproportionate and same may be set aside and some reasonable punishment like withholding of increment may be passed. Inter alia the learned advocate appearing for the second party urged when this court after receiving the evidence of both sides and hearing arguments hold the Domestic Enquiry being fair and proper and the learned counsel appearing for the first party failed to demonstrate the finding of the enquiry officer being perverse the only question remains for consideration is whether the punishment imposed is disproportionate to the charges proved against the first party and as the charge disclose the first party who remained unauthorisedly absent for a period of 138 days from 17-04-1998 to 01-09-1998 without prior intimation or sanction of leave only on publication of notice of 'Voluntary Abandonment of Service' in Samyukta Karnataka Daily Newspaper dated 04-08-1998 reported to duty on 2-09-1998 and even thereafter failed to submit even leave application for regularization of the absence and even earlier on 3 occasions vide orders dated 12-10-1992, 3-11-1992 and 26-09-1996 he was punished for remaining unauthorized absent and failed to submit leave application since do amounts to a gross misconduct as per Para 19.5(p) & (f) of Bipartite Settlement 1966 the punishment of dismissal imposed is proportionate as such there is no need to interfere either in the finding of the enquiry officer or the punishment imposed by the Disciplinary Authority and in support of his arguments relied upon the decisions reported in 2008 LLR 113 SC in the case of M/s. L&T Komatsu Ltd. Vs. M Udyakumar & 2008 LLR 440 SC in the case of New India Assurance Co. Ltd. Vs. Vipin Behari Lal Srivastava.

4. On appreciation of the facts and circumstances of the case with the arguments addressed by the learned advocates appearing for both sides, I am of the considered view that there is no reason to say the finding of the enquiry officer being perverse or the punishment imposed is disproportionate and the reference is liable to be rejected for the following reasons:

Reasons :

5. It is borne out from the records that the first party who was appointed as a Probationary Attender on 25.09.1972 at Almel Branch of the second party and was promoted as a Probationary Clerk and confirmed in that post w.e.f. 1.06.1979 while working in Gadag branch of the second party was served with charge sheet dated 30th October, 1998 which reads as under:—

Charge Sheet :

“It is reported against you as under:—

- (i) That you are in the habit of remaining unauthorisedly absent from duty without adhering to Leave Rules and Regulations inspite of you being advised repeatedly and punished earlier in the matter. You have remained absent on loss of pay for more than 380 days and on unauthorized absence for more than 1375 days as on 11-09-1998.
- (ii) You have remained unauthorisedly absent from duty for a period of 138 days from 17-04-198 without prior intimation or sanction of leave. You reported for duty on 02-09-1998 on publication of Notice of “Voluntary Abandonment of Service” on 04-08-1998 in Samyukta Karnataka, a Kannada Daily. Even on reporting for duty, you have failed to submit leave application for regularization of your absence.
- (iii) You have failed to submit leave application for regularization of your aforesaid absence inspite of you being punished on three occasions *vide* orders dated 12-10-1992, 03-11-1992 and 26-09-1996 for your willful failure to submit leave application.

The Bank therefore charges you as under:—

- (a) Your conduct of remaining unauthorisedly absent from duty without prior intimation or sanction of leave as stated in para above constitutes a gross misconduct under para 19.5(p) of Bipartite Settlement, 1966.
- (b) Your willful failure to submit the leave application inspite of you being punished earlier for similar misconduct in the past, is an act constituting a gross misconduct under para 19.5(f) of Bipartite Settlement 1966.

You are therefore hereby called upon to submit your reply if any, within seven days from the date of receipt of this charge sheet, failing which further proceedings will follow.”

and appointed Shri B.H. Ramaprasad, Manager as Enquiry Officer. The enquiry officer while securing the presence of the first party when read over and explained the charge he admitted the same and inspite of it the enquiry officer while recording the evidence of two witnesses as MW1 & MW2

for the management and exhibiting 13 documents as Exs. M1 to M13 having regard to the evidence while holding that the CSE/first party was a chronic absentee and not adhering to leave rules and regulations remained unauthorisedly absent for 138 days without intimation or sanction of leave inspite of being punished on 3 occasions previously for remaining unauthorisedly absent and failing to submit leave application the charge has been proved. Then the Disciplinary Authority after affording opportunity of hearing imposed the punishment of dismissal by his order dated 3.09.1999 and on appeal by the first party/CSE the Appellate Authority also affording opportunity of hearing confirmed the order of the Disciplinary Authority. Then on failure of the conciliation proceedings initiated at the instance of the CSE/first party the Central Government made this reference for adjudication.

6. As already adverted to by me above, the Domestic Enquiry conducted by the second party being held fair and proper by order dated 30th June, 2011 and having regard to the admission of the charge by the CSE/first party before the enquiry officer and the evidence brought on record the learned advocate appearing for the first party fairly without making any attempt to urge that the finding of the enquiry officer is perverse, just urged the punishment imposed being disproportionate relying on the decision reported in 2009-CLR, Part III Page 645 Supreme Court of India in the case of Chairman-cum-Managing Director, Coal India Ltd., & Anr. Vs. Mukul Kumar Choudhuri & Ors. Therefoere, the only point that remains for my consideration is ‘whether the punishment of dismissal imposed by the Disciplinary Authority and confirmed by the Appellate Authority is disproportionate to the admitted charge by the CSE/first party?’ In the case of Chairman-cum-Managing Director, Coal India Ltd., & Anr. Vs. Mukul Kumar Choudhuri & Ors reported in 2009-CLR, Part III Page 645 Supreme Court of India relied upon by the learned advocate appearing for the first party since the charge of unauthorized absence for six months admitted by the employee punishment of removal is held as unduly harsh and held that justice would be met if he is reinstated denying back wages from the date of his removal until reinstatement, but in the instant case it is not just a case of simple unauthorised absence and it is a case where CSE/first party remained absent from 17-04-1998 and on publication of notice of ‘Voluntary Abandonment of Service’ in Samyukta Karnataka Newspaper dated 4-08-1998 reported for duty on 2.9.1998 (after a period of 138 days) and failed to submit leave application for regularization of his absence and on 3 earlier occasions for the similar conduct *i.e.* remaining unauthorized absent and failing to submit leave application he was punished, as per Para 19.5(p) and 19.5(f) of Bipartite Settlement it constitutes a gross-misconduct, as such, the facts and circumstances in the case of Chairman-cum-Managing Director, Coal India Ltd., & Anr. Vs. Mukul Kumar Choudhuri & Ors reported in 2009-CLR, Part III Page

645 Supreme Court of India cannot be made applicable to the case on hand. On the other hand the Hon'ble Supreme Court in the case of M/s L&T Komatsu Ltd Vs. M. Udyakumar reported in 2008 LLR 440 SC relied on by the learned advocate appearing for the second party held leave not being a matter of right, habitual absenteeism amounts to gross violation of discipline as such punishment of dismissal is justified. Therefore, the facts and circumstances of the case of habitual unauthorized absence and not applying for leave and reporting to duty after issue of notice of Voluntary Abandonment of Service through daily newspaper being a gross-misconduct it is not a case to be viewed leniently to interfere in the punishment of dismissal imposed by the management/second party. Under the circumstance I find no reason to interfere either in the finding of the enquiry officer or the punishment imposed by the Disciplinary Authority and upheld by the Appellate Authority. In the result I pass the following award:

AWARD

The reference is rejected holding that the management of Karnataka Bank Limited is justified in dismissing the services of Shri S.G. Goni, Clerk and that he is not entitle for any relief.

(Dictated to PA transcribed by her corrected and signed by me on 3rd July, 2012)

S.N. NAVALGUND, Presiding Officer

ANNEXURE

List of witnesses for the Management/Second party examined in the Domestic Enquiry

- | | |
|-------------------------------------|-----|
| 1. Shri K.S. Ganapathi, Manager | MW1 |
| 2. Shri R.T. Hullur, Branch Manager | MW2 |

List of documents marked for the Second party/ Management in the Domestic Enquiry

- | | |
|--|-------|
| 1. Office copy of the Charge Sheet issued to first party dated 30-10-1998. | Ex.M1 |
| 2. First party's reply to the charge sheet dated 9-11-1998 | Ex.M2 |
| 3. Letter written by the branch Manager Gadag dated 30-4-1998 | Ex.M3 |
| 4. Office copy of the letter addressed to CSE dated 13-05-98 | Ex.M4 |
| 5. Registered post acknowledgement due notice returned unnerved with acknowledgement Card. | Ex.M5 |
| 6. Office copy of the Registered Notice issued to CSE dated 17-07-1998 | Ex.M6 |
| 7. Publication of notice in Samyukta Karnataka Newspaper dated 4-8-98 | Ex.M7 |
| 8. Duty joining letter of the CSE dated 2-09-98 | Ex.M8 |

- | | |
|--|---------|
| 9. Photocopy of extract of leave record | Ex.M9 |
| 10. Office copy of the memorandum for unauthorized absence dated 11-9-98 | Ex.M10 |
| 11. Photocopy of order passed by the Disciplinary authority dated 12-10-1992 | Ex.M11 |
| 12. Photocopy of order passed by the Disciplinary authority dated 3-11-1992 | Ex.M.12 |
| 13. Photocopy of order passed by the disciplinary authority dated 25-09-1996 | Ex.M13 |

List of witnesses examined for the First Party in the Domestic Enquiry

Nil

List of documents marked for the First Party

Nil

नई दिल्ली, 26 सितम्बर, 2012

का.आ. 3208.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंध के संबंध निर्योजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 52/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-09-2012 को प्राप्त हुआ था।

[सं. एल-12012/60/2008-आईआर(बी-1)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 26th September, 2012

S.O. 3208.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 52/2008) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, which was received by the Central Government on 26-09-2012.

[No. L-12012/60/2008-IR(B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present :

Shri J. Srivastava, Presiding Officer,
C.G.I.T.-cum-Labour Court,
Bhubaneswar.

INDUSTRIAL DISPUTE CASE No. 52/2008

Date of Passing Award-17th September, 2012

Between :

The Assistant General Manager,
State Bank of India, Bhubaneswar Main Branch
Dist. Khurda, Bhubaneswar (Orissa).

... 1st Party-Management

And

Their workman Sri Santosh Kumar Prusty,
Qr. No. VR-5/1, Kharvela Nagar, Unit-3,
Bhubaneswar. (Orissa)

...2nd Party-Workman

Appearances :

Shri Alok Das,	For the 1st Party-
Authorized Representative		Management
None.	For the 2nd Party-
		Workman.

AWARD

The Government of India in the Ministry of Labour has referred the present dispute existing between the employers in relation to the Management of State Bank of India and their workman under clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 vide Letter No. L-12012/60/2008-IR (B-I), dated 10-07-2008 to this Tribunal for adjudication to the following effect :

"Whether the action of the management of State Bank of India, Main Branch, Bhubaneswar, in terminating the services of Sri Santosh Kumar Prusty, ex-workman w.e.f. 30-9-2004, is legal and justified? If not, what relief the workman is entitled to?"

2. The 2nd Party-Workman has filed his statement of claim alleging that he had joined his services as a Messenger on 30-12-1989 after succeeding in interview. He was assured to get permanent appointment order after one year or on completion of 240 days' work in a calendar year, but despite completion of several years of continuous satisfactory service and putting in more than 240 days' work in each year he was not regularized, instead terminated and refused employment from 30-9-2004 by the 1st Party-Management without any written communication or payment of compensation. The 1st Party-Management in refusing employment to him violated all principles of natural justice and mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947. He therefore brought the matter into the notice of the C.G.M. and C.D.O. of the State Bank of India, L.H.O., Bhubaneswar. But on hearing nothing he raised an industrial dispute before the Regional Labour Commissioner (Central) vide his letter dated 21-02-2005. Conciliation proceedings were started, but they failed and thereupon a failure report was submitted to the Government and the Government made the present reference. He is thus entitled to get full back wages and reinstatement with continuity of service with effect from 30-9-2004.

3. The 1st Party-Management in its reply through written statement has stated that the present dispute is misleading and misconceived in as much as the 2nd Party-

workman had already raised a similar dispute along with 124 other workers through the State Bank of India Temporary 4th Grade Employees Union before the Assistant Labour Commissioner (Central), Bhubaneswar challenging their alleged termination of service by the 1st Party-Management. In the said dispute the failure report was sent by the Asst. Labour Commissioner (Central), Bhubaneswar to the Ministry of Labour who in turn referred the matter to this Tribunal for adjudication and the same is pending before this Tribunal being I.D. Case No. 7/2007. The name of the 2nd Party-workman is appearing at Sl. No.3 in Annexure-A to the said reference. Thus, raising a common dispute for same cause of action and again raising individual dispute for same relief is nothing but an abuse of the process of law and amounts to multiplicity of litigation. The Asst. Labour Commissioner (Central) while conciliating the individual disputes disregarded the direction of the Deputy Chief Labour Commissioner (Central) not to take any further action on the separate disputes raised by the Same workers for the same cause of action. The allegation of the 2nd Party-workman that he had joined the Bank on 30-12-1989 and he was discontinued from service on 30-9-2004 is not correct. He was engaged intermittently on temporary/daily wage basis due to exigencies of work. When his services were no more required he was not engaged further. It is further denied that he was performing his duties with all sincerity and honesty and to the best of satisfaction of the Authority. The 2nd Party-workman has neither completed several years of continuous service in the Bank nor he has completed 240 days of continuous service in any calendar year preceding the date of his alleged termination. In order to give an opportunity for permanent absorption to the ex-temporary employees/daily wagers in the Bank in view of the various settlements entered into between the All India State Bank of India Staff Federation and the Management of the State Bank of India all eligible persons including the 2nd Party-workman were called for interview in the year 1993 and those succeeded were appointed as per panel till 31-3-1997. As the 2nd Party-workman did not succeed in the interview, he could not be appointed in the Bank. But the Union or the 2nd Party-workman has never challenged the implementation of the settlement which has now gained finality. It is further submitted that some of the wait-listed candidates, who could not be absorbed in the Bank's service due to expiry of the panel on 31st March, 1997, filed Writ Petitions before the Hon'ble High Court of Orissa. But the Hon'ble High Court of Orissa by a common order dated 15-5-1998 passed in O.J.C. No. 2787/1997 dismissed a batch of Writ Petitions and upheld the action of the Management of the Bank. This order of the Hon'ble High Court was also upheld by the Hon'ble Supreme Court of India in S.L.P. No. CC -3082/1999. Hence the above matter has attained finality and cannot be re-agitated. Since the services of Sri Prusty were discontinued much earlier to 30-9-2004, his claim has become stale by raising the dispute after seven years. It is

a settled principle of law that delay destroys the right to remedy. Thus the present dispute is liable to be rejected on the above grounds.

4. On the pleadings of the parties following issues were framed:—

ISSUES

1. Whether the present reference of the individual workman during the pendency of the I.D. Case No.7 /2007 before this Tribunal on the same issue is legal and justified?
2. Whether the workman has worked for 240 days as enumerated under Section 25-F of the Industrial Disputes Act?
3. Whether the action of the Management of State Bank of India, Main Branch, Bhubaneswar, in terminating the services of Shri Santosh Kumar Prusty, Ex-workman with effect from 30-9-2004, is legal and justified?
4. If not, what relief the workman is entitled?
5. The 2nd Party-workman despite giving sufficient opportunity did not adduce any evidence either oral or documentary in support of his claim and willingly kept himself out of the proceedings at the stage of evidence by absenting himself or his Union representative.
6. The 1st Party-Management has adduced the oral evidence of Shri Abhay Kumar Das as M. W.-1 and filed documents marked as Ext.-A to Ext.-J in refutation of the claim of the 2nd Party-workman.

FINDINGS

ISSUE NO.1

7. A specific plea has been raised by the 1st Party-Management that a group of 125 employees including the 2nd Party-workman had already raised a similar dispute in I.D. Case No. 7/2007 before this Tribunal for the same relief which is pending for adjudication. The dispute as referred to in I.D. Case No.7 /2007 is given below for comparison with the dispute in the present case —

“Whether the action of the Management of State Bank of India, Orissa Circle, Bhubaneswar in not considering the case of 125 workmen whose details are in Annexure-A for re-employment as per Section 25(H) of Industrial Disputes Act, 1947 is legal and justified? If not, what relief the workmen are entitled to?”

8. The name of the 2nd party-workman appears at Sl. No.3 in Annexure-A to the above reference. In both the cases the matter of disengagement or so called retrenchment is involved to be considered in one or the

other way and the relief claimed is with regard to re-employment. But challenge has been made more specifically against the termination of service of the 2nd Party-workman in the present case while in I.D. Case No.7 /2007 prayer has been made with regard to consideration of the case of 125 workmen for re-employment as per Section 25-H of the Industrial Disputes Act, 1947. In fact, in the latter case the workmen have submitted or virtually surrendered to their cessation of employment or alleged termination, whereas in the present case they have challenged their termination on facts and law. Virtually in the present case validity and legality of the alleged termination has to be tested at the alter of facts and legal propositions. Therefore it cannot be said that the issues involved in both the cases are same. This case can proceed despite pendency of I.D. Case No. 7/2007 and the present reference by the individual workman pending for adjudication is maintainable being legal and justified. This issue is therefore decided in the affirmative and against the 1st Party-Management.

ISSUE NO. 2

9. The onus to prove that the 2nd Party-workman has completed one year or 240 days of continuous service during a period of 12 calendar months preceding the date of his alleged termination or disengagement from service lies on him, but the 2nd Party-workman has not adduced any evidence either oral or documentary in support of his contention. He has only alleged in his statement of claim that he had joined the service on 30-12-1989 and worked till 30-9-2004 on temporary/casual/daily wage basis, but he has not filed any certificate or reliable document showing the break-up of year-wise service rendered by him under the 1st Party-Management during the above period. The 1st Party-Management, on the other hand, has alleged that the 2nd Party-workman was engaged intermittently on temporary/daily wage basis due to exigencies of work and he had never completed 240 days continuous service in a calendar year. M. W.-1 Shri Abhay Kumar Das in his statement before the Court has stated that "The disputant was working intermittently for few days in our Branch on daily wage basis in exigencies..... He had not completed 240 days of continuous and uninterrupted service preceding the alleged date of the termination". He has denied the allegation that the workman was discontinued from service with effect from 30-9-2004, but has stated that "In fact the workman left working in the Branch on 1-9-1998." The 2nd Party-workman has to disprove the evidence led by the 1st Party-Management, but he has not come before the Court to give evidence. A temporary or daily wage worker has no right to claim reinstatement and particularly when such an employee had not worked for 240 days continuously during a period of 12 calendar months preceding the date of his so-called termination. Thus he is not entitled to get benefit of Section 25-F of the Industrial Disputes Act, 1947. This issue is hereby decided against the 2nd Party-workman for failing to prove that he

had worked for 240 days continuously during a period of 12 calendar months preceding the date of his disengagement or alleged termination from service.

ISSUE NO.3

10. Since the 2nd Party-workman could not prove that he had rendered 240 days continuous service under the 1st Party-Management during a period of 12 calendar months preceding the date of his disengagement or alleged termination, he is not entitled for re-employment even in case of his alleged illegal and arbitrary termination. Moreover, he was a temporary/casual/daily wage employee. His services can be terminated at any time without assigning any cause by the 1st Party-Management. He has no legal right to be retained in service for the extended period, if he was appointed for a certain period or when no time is specified. The 2nd Party-workman has not filed any letter of appointment or proof of having rendered service under the 1st Party-Management for a specified period against a regular post. The 1st Party-Management has further alleged that in time of exigencies only the 2nd Party-workman was employed. It means that with the end of exigencies his job also came to an end. In view of the matter the action of the management of State Bank of India, Main Branch, Bhubaneswar in terminating the services of Sri Santosh Kumar Prusty, ex-workman with effect from the alleged date of his termination is fair, legal and justified. This issue is accordingly decided in the affirmative and against the 2nd Party-workman.

ISSUE NO.4

11. In view of the findings recorded above under Issue Nos. 2 and 3, the 2nd Party-workman is not entitled to any relief whatsoever claimed.

12. Reference is answered accordingly.

JITENDRA SRIVASTAVA, Presiding Officer

नई दिल्ली, 26 सितम्बर, 2012

का.आ. 3209.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दक्षिण रेलवे प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 12/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26-09-2012 को प्राप्त हुआ था।

[सं. एल-41012/01/2010 आईआर (बी-1)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 26th September, 2012

S.O. 3209.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 12/2011)

of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the management of Southern Railway and their workmen, received by the Central Government on 26-09-2012.

[No. L-41012/01/2010-IR(B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 20th September, 2012

Present : A.N. JANARDANAN,

Presiding Officer

Industrial Dispute No. No. 12/2011

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Southern Railway and their Workman)

BETWEEN

Sri. A. Natarajan : 1st Party-/Petitioner

Vs.

The Chief Administrative Officer, : 2nd Party/
Southern Railway, Respondent
Egmore,
Chennai-600008

Appearances :

For the 1st Party/Petitioner : M/s S. Meenakshi,
D. Arun, Advocates

For the 2nd Party/Managment : Sri K. Muthamil Raja,
Advocate

AWARD

The Central Government, Ministry of Labour and Employment *vide* its Order L-41012/01/2010-IR (B-I) dated 11.02.2011 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the action of the management of Southern Railway in terminating services of Sri. A. Natarajan, S/o Sri V. Adimoolam, w.e.f. 12-09-2005 is legal and justified? To what relief the workman is entitled?

2. After the receipt of Industrial Dispute, this Tribunal has numbered it as ID 12/2011 and issued notices to both sides. Both sides entered appearance through their respective counsel and filed their Claim and Counter Statement as the case may be.

3. The contentions in the Claim Statement briefly read as follows :

Petitioner employed as a Bungalow Lascar in the office of Himanshu Goswami, Deputy Chief Engineer at Trichy on reporting duty for the first time in 2003 was asked to attend work at his Bungalow the next day itself. He joined the Officer on 09.06.2003. Wife of the Officer paid him Rs. 500/- per month from June, 2003 to March, 2005. After sometime petitioner's father requested the Officer to send a proposal for the petitioner's appointment to which Officer demanded Rs. 1.00 lakh as being needed for his father's heart operation. On persuasion reduced the amount to Rs. 50,000 with instantaneous payment of Rs. 25,000 which petitioner paid on 26-06-2004 raising a loan. Then the officer sent proposal on 02-07-2004 to the Chief Personnel Officer, Madras for sanction to appoint him as Bungalow Lascar with documents, certificates and conduct certificates. Ten days thereafter officer and his wife called his father to his residence and demanded Rs. 5.00 lakhs upon which petitioner left the services since his father could not afford the payment. The Officer returned Rs. 25,000 two days later. Afterwards on the persuasion of father's friend Mr. Zaheer Hussain, he was permitted to return to work without monetary demands. On the transfer of the officer to Trichy in March, 2005 petitioner and his father were instructed to go along with him to help in shifting. Petitioner continued to work at Trichy Bungalow of the Officer. On 12.04.2005 the Officer sent a second proposal to the Chief Administrative Officer, Constructions, Chennai for petitioner's appointment as Bungalow Lascar, which was forwarded to the General Manager on 26-04-2005. General Manager's approval was communicated on 25-05-2005. Petitioner being found medically fit appointment order dated 16-06-2005 was issued, retaining which Officer demanded Rs. 50,000 should the petitioner need work. He was also asked to give Rs. 2,000 to them every month. Raising loans and sundry borrowings by him and his father on 28-06-2005 Rs. 50,000 was paid upon which the appointment order was handed over to him. Officer issued confirmation letter dated 01-07-2005 for his appointment from 16-06-2005. In August 2005 the Officer's wife took Rs. 2500 from petitioner's salary for July 2005. Thereafter they told him that someone from their village was ready to give Rs. 5,00,000 for the same job and demanded Rs. 5,00,000. Petitioner was also asked to surrender his full salary to them for the next three years. On his reluctance he was denied food and was also compelled to work late in the night. The Officer started harassing him from September 2005 stopping him from coming to work. The Officer returned Rs. 50,000 to his father taken

before for appointment, asking father to state in writing that petitioner does not require job. Officer thereafter began to mark petitioner absent in the Attendance Register from 12-09-2005. After 06-10-2005 Officer again instructed him not to come for work. His request to allow to work was turned down by not allowing to enter the Bungalow. Afterwards he understood from the Personnel Branch Office that his services were terminated. Termination Order dated 14-10-2005 w.e.f. 12-09-2005 was served stating his performance as unsatisfactory and that he was unauthorizedly absent. It was without an enquiry or proper application of mind. Pursuant to complaint from the petitioner he himself and father attended the enquiry. Information under Right to Information Act dated 10-08-2010 disclosed that the case was closed by the Railway Board on 01-07-2010 which should not have been done. He represented on 31-01-2007 to the General Manager, Southern Railway for reinstatement which was followed by a reminder dated 11-10-2007 but in vain. He also sent representation dated 23-04-2008 to the Chief Personnel Officer and Dy. Chief Engineer. Officer and his wife are fully satisfied with his work. Never was any warning issued to him. He was not paid salary for September. He is remaining unemployed. ID raised having failed the reference is caused to be made. His termination is illegal, unfair and arbitrary which was without any enquiry on alleged misconduct of unauthorized absence and unsatisfactory service and is wholly illegal and unjust. If termination is not punitive it is in violation of Section-25G and H of ID Act. He is entitled to reinstatement with all benefits which is prayed for.

4. Counter Statement averments bereft of unnecessary details read as follows:

The post of Lascar to do domestic service is of the choice of the Officer on whose recommendation the candidate will be appointed and as such is not governed by normal recruitment rules. His service is purely temporary liable to be terminated within one year of service if found unsatisfactory or if his Officer is transferred to other Railways. Term "*Industry*" does not cover domestic service. He cannot invoke ID Act provisions. He is not a workman. Domestic Service is not included under Section-2(i) of ID Act. The dispute is not maintainable. In terms of decision of Central Administrative Tribunal, New Delhi petitioner is not a Railway Servant and his service can be terminated for unsatisfactory work without enquiry and the petition is to be dismissed. Petitioner's appointment was under a clear instruction that his service will be terminated if found unsatisfactory or on his Officer getting transferred to other Railways. His Officer Himanshu Goswami had found his

performance unsatisfactory and also that he was unauthorizedly absent from 12-09-2005. Hence the action terminating his services from 12-09-2005. The matter was advised to the Chief Personnel Officer and his services were discontinued from the substitute engagement within four months vide letter dated 26-03-2007. As per Condition No. 4 his services are liable to be terminated within three years. He served as Bungalow Peon just for 89 days. He was not provided with temporary status at the time of termination. Under IREM Rule 1502(i) he is not entitled for any notice of termination or compensation. Allegations of demands for money from him are false. Enquiry based on complaint to Vigilance Department of Railways is under investigation. Section-25G and 25H of ID Act are not applicable. Petitioner is governed by the terms of the contract. His appointment was not based on normal recruitment rules applicable to the Railway Servant. He is entitled for appointment in Railway only after completion of three years of service.

5. Points for consideration are:

- (i) Whether the termination from service of Sri. A. Natarajan by Southern Railway w.e.f. 12.09.2005 is legal and justified?
- (ii) To what relief the concerned workman is entitled?

6. Evidence consists of oral evidence of WW1 and Ex. W1 to Ex. W17 on the petitioner's side and that of MW1 and Ex. M1 to Ex. M10 on the Respondent's side.

Points (i) & (ii)

7. Heard both sides. Perused the records, documents and evidence. Both sides keenly argued in terms of their contentions in the respective pleadings with reference to documents and evidence. Prominent arguments advanced on behalf of the petitioner are that the appointment of the petitioner having been approved on 20-05-2005 which signifies his date of entry into service for all purposes and benefits, his termination is bad in law. No Charge Sheet was issued or any enquiry held. His wages were being paid by the Railway. As admitted by MW1 no Charge Sheet or enquiry was held for proved misconduct committed by the workman. There is non compliance of Section-25F of the ID Act. Section-11A of the ID Act is applicable to him.

8. Contra arguments on behalf of the Respondent are that he was appointed on the recommendation of an individual officer of the Railway. His work was not satisfactory. He also remained unauthorizedly absent. He has not worked for 120 days in order to enable him to attain temporary status. Under Rule-1502 of the IREM no notice is needed for termination if he has not completed 120 days of service. There is no need of enquiry.

9. In support of petitioner's contentions the learned counsel invited this Court's attention to a number of decisions of the Supreme Court and High Court as are mentioned below :

In the case of ANOOP SHARMA VS. EXECUTIVE ENGINEER, PUBLIC HEALTH DIVISION-I, PANIPAT (2010-5-SCC-497) Supreme Court held that "leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Sections-25F(a) and (b) has the effect of rendering the action of the employer as nullity and the employee is entitled to continue in employment as if his service was not terminated".

In the case of NAR SINGH PAL VS. UNION OF INDIA AND OTHERS (2000-3-SCC-588) Supreme Court held "applying the above principles, the order in the instant case, cannot be treated to be a simple order of retrenchment. It was an order passed by way of punishment and, therefore, was an order of dismissal which, having been passed without holding a regular departmental enquiry, cannot be sustained".

In case of MOHANLAL VS. BHARAT ELECTRONICS LTD. (1981-2-LLJ-70) Supreme Court held "we hold that the termination of service of the appellant was *ab initio void* and inoperative and a declaration is made that he continues to be in services with all consequential benefits, namely, back wages, in full and other benefits, if any".

In the case of THE MANAGER, GOVERNMENT BRANCH PRESS AND ANOTHER VS. D.B. BELLIAPPA (1979-1-SCC-477) Supreme Court held "it is true that the competent authority has discretion under the conditions of service governing the employee concerned to terminate the latter's employment without notice. But, such discretion has to be exercised in accordance with the reason and fair play and not capriciously. Bereft of rationality and fairness, discretion degenerates into arbitrariness which is the very antithesis of the rule of law on which our democratic policy is founded. Arbitrary invocation or enforcement of a service condition terminating the service of a temporary employee may itself constitute denial of equal protection and offend the equality clause in articles 14 and 16(1)".

In the case of DILIP HANUMANTHRAO SHIRKE AND OTHERS VS. ZILA PARISHAD, YAVATMAL AND OTHERS (1990-1-LLJ-445) High Court of Bombay held "to make appointments for specific periods did not absolve the management

from complying with the conditions stipulated under Section-25F of the Industrial Disputes Act at the time the period of employment comes to an end. The benefit of law laid down by the Supreme Court was extended to all the workmen, even to those who were employed for specific work or for a particular job and even to casual labourers who were engaged merely to complete casual nature of work”.

In the case of *K. RAJENDRAN VS. DIRECTOR (PERSONNEL PROJECT AND EQUIPMENT CORPORATION OF INDIA LTD., NEW DELHI AND ANOTHER* (1992-1-LLN-150) Madras High Court held “in view of the discussion, there is no difficulty in coming to the conclusion that the termination of service of the petitioner in this case amounts to retrenchment within the meaning of S. 2(oo) of the Act and that the respondent has not complied with the mandatory provision of S.25F of the Act by paying the retrenchment compensation to the petitioner and, therefore, the impugned order of the respondent terminating the service of the petitioner is bad in law and the same is liable to be set aside”.

In the case of *D.K. YADAV VS J.M.A. INDUSTRIES LTD.* (1993-3-SCC-259) Supreme Court held “the cardinal point that has to be borne in mind, in every case, is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. It is not so much to act judicially but is to act fairly, namely, the procedure adopted must be just, fair and reasonable in the particular circumstances of the case. In other words application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority from acting arbitrarily affecting the rights of the concerned person”.

In the case of *DHARMANAND AND ANOTHER VS. UNION OF INDIA AND OTHERS* (2004-10-SCC-609) Supreme Court held “we are of the view that if these petitioners should have been treated as government servants, the services could not have been terminated on the ground that their services were no longer required. The only ground stated for terminating service was that it was only for 5 years’ tenure and their services were not longer required. We hold that termination was illegal and the petitioners are entitled to be reinstated in service forthwith. The petitioners are also entitled to get consequential benefits”.

In the case of *L. ROBERT D’SOUZA VS. EXECUTIVE ENGINEER, SOUTHERN RAILWAY AND ANOTHER* (1982-1-SCC-645) Supreme Court held “absence without leave is a misconduct and

termination of service on such ground without complying with minimum principles of natural justice would not be justified”.

In the case of *MANAGER (P&A), ONGC LTD., CHENNAI VS. G. RADHAKRISHNAN* (2005-2-LLN-881) High Court of Madras held “on a plain reading of S.2(oo) (bb), it is quite clear that such term based employment would fall outside the scope of ‘retrenchment’ is long as the requirement of such fixed period of employment was bona fide required by the employer. It was, therefore, repeatedly pointed out that such excepted categories requires a rigorous test rather than accepting the plea of employer on its face value or otherwise it would cause serious prejudice to an employee, who can be taken for a ride by unscrupulous employers by contending that the term of employment was for specific period though as a matter of fact such period of employment lasted quite for a long spell”.

In the case of *M/s J.K. COTTON SPINNING AND WEAVING MILLS COMPANY LTD. VS. THE LABOUR APPELLATE TRIBUNAL OF INDIA, IIIrd BRANCH, LUCKNOW AND OTHERS* (AIR-1964-SC-737) Supreme Court held “while we are dealing with this point, it is necessary to bear in mind that the bungalows are owned by the appellant and they are allotted to the officers as required by the terms and conditions of the officer’s employment. Since the bungalows are allotted to the officers, it is the duty of the appellant to look after the bungalows and take care of the gardens attached to them. If the terms and conditions of service require that the officers should be given bungalows and gardens are attached to such bungalows, it is difficult to see why in the case of Malis who are employed by the appellant, are paid by it, and who work subject to its control and supervision and discharge the function of looking after the appellant’s property, it should be said that the work done by them has no relation with the industry carried on by the appellant. The employment is by the appellant, the conditions of service are determined by the appellant, the continuance of service depends upon the pleasure of the appellant, subject, of course, to the Standing Orders prescribed in that behalf and the work assigned to the Malis is the work of looking after the properties which have been allotted to the officers of the appellant. Like the transport amenity provided by the factory to its employees, bungalows and gardens are also a kind of amenity supplied by the employer to his officers and the drivers who look after the buses and the Malis who look after the gardens must, therefore, be held to be engaged in operations which are incidentally connected with the main industry carried on by the employer”.

In the case of V.P. AHUJA VS. STATE OF PUNJAB AND OTHERS (2000-3-SCC-239) Supreme Court held “a probationer like a temporary servant, is also entitled to certain protection and his services cannot be terminated arbitrarily, nor can those services be terminated in a punitive manner without complying with principles of natural justice”.

10. The learned counsel for the Respondent relied on the decision in ONGC AND OTHERS VS. M.D.S. ISKANDR ALI (1980-3-SCC-428) where it is held by the Supreme Court that it is well settled by a long course of decisions of this Court that in the case of a probationer or a temporary employee, who has no right to the post such a termination of the services is valid and does not attract Article-311 of the Constitution.

11. In the present reference the termination from service of the petitioner-workman appointed as Substitute Bungalow Laskar by the General Manager of the Southern Railway is in challenge. The noteworthy contentions on behalf of the petitioner precisely are that the termination was one brought about without holding an enquiry rendering it illegal and *void ab initio*. The impugned termination is not an order of termination simplicitor but is a punitive one for which departmental enquiry is a *sine-quanon*. Even if it is not a punitive one, it could only be a retrenchment for which compensation was to have been given but has not been paid. There has not had been any complaint or warning against the petitioner before. The termination of service of the petitioner in any view of the matter is illegal, unjust, arbitrary and against the principles of natural justice. It lacks bona fides. The ground for the termination held out as unsatisfactory performance or unauthorized absence of the petitioner is not at all established by any evidence. Going by Ex. W4/M4-Appointment Order, Ex. M9-Policy of Appointment, it could be gathered that the appointment of the petitioner as Bungalow Laskar constitutes another the line of recruitment independent of the normal recruitment rules applicable generally to the Railway Administration. A Bungalow Laskar after having been once appointed, as to what shall be the career progression avenues that may enure to him and the norms and conditions of his services are also provided. It includes grant of temporary status by which he is entitled to all rights and privileges admissible to temporary railway servants. He will be eligible for regularization against Group ‘D’ vacancies in the open line field units subject to medical fitness after completion of 3 years continuous service from the date of temporary status. After absorption if he is not required for any reason such as transfer of the Officer or by his successor he will be transferred to the unit where his lien is to be maintained. The very provisions as above amply go to show that Bungalow Laskar is not to be thrown out simplicitor. The ground for termination is unsatisfactory work within 3 years. The termination of petitioner from service cannot be understood to be one

due to any unsatisfactory work or unauthorized absence of the petitioner. It is on a report of the individual Officer as to the unsatisfactory performance of work or unauthorized absence of the petitioner from 12-09-2005 that he was thereafter terminated w.e.f. 12-09-2005 under Ex. M6-Termination Order dated 14-10-2005. The order is in its nature in a laconic expression as to the misconduct of the workman without any details. When the case of petitioner is that he was being terminated from service from that day the rival case of the Management is that he was unauthorizedly absenting himself from that day. To many an accusation of the petitioner against the Officer alleging the latter to have had demanded money by way of gratification, the case of the Respondent is not specific to deny it except saying that nothing of that sort has happened. The testimony of the petitioner by way of oath against oath is not rendered so improbable as to discern that there is no some grain of truth in it to render the case of the petitioner more probable. Though enquiry is not held or is absolutely not necessary that does not obliterate the necessity of giving a reasoned order to the petitioner terminating his service. The termination is quite arbitrary. It is quite illegal. It is a malafide action. That the petitioner was only a Bungalow Laskar, proved appointed on the recommendation of his very officer does not mean that he could be dealt with by the very officer in any way he pleases. Even though a menial, constitutional guarantee of fundamental rights, freedom and right to dignity and decent living could never be negated to him. He cannot but be subjected to Certified Standing Orders of the Management. It is good to remember in this context the settled law on the fact that Certified Standing Orders have statutory force which do not expressly exclude the application of the principles of natural justice (1993-3-SCC-259 of the Apex Court already quoted above). The post in which the petitioner is borne cannot be read as one to which he has no right of a lien in as much as the Ex. W4/M4-Appointment Order clearly intends the career progression of the petitioner once he entered into service as a Bungalow Laskar. His entitlement as admitted by the Management regarding service though purely temporary in nature and is with liability to be discharged within 3 years for unsatisfactory work, when he is discharged for that reason that should be substantiated by the Management before he is terminated. The termination is not one simplicitor but is punitive. Here the absence of enquiry is quite illegal and arbitrary and it springs much against the Management’s highly inhuman action. The decisions relied on by the learned counsel for the petitioner fully support the above view. The decision upon which reliance was placed by Respondent’s Learned Counsel are not squarely applicable to the facts. The absence of holding an enquiry and allowing servants like the petitioner being terminated from service in an arbitrary manner is totally unjust. It will lower the condition of employment of such workmen subject to the sweet will and pleasure of his

employer, whoever he is, relegating it to the ancient concept of employment by kings, former rulers of erstwhile kingdoms known as “*pleasure tenure*” with a transient life, lasting for a time until only the workman or employee is able to keep his employer exhilarated in any situation irrespective of whether or not that could be really possible of being done by the employee invariably. It is quite improper in a refined Society and for a civilized life. It is also too undemocratic an approach to be sustained. Hence, it is only to be held that the termination of service of the petitioner is illegal and unjustified. The same is set aside. The petitioner is ordered to be reinstated into service forthwith with continuity of service and all attendant benefits, but not with backwages.

12. The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 20th September, 2012)

A.N. JANARDANAN, Presiding Officer

Witnesses Examined :

For the 1st Party/Petitioner: WW1. Sri A. Natarajan

For the 2nd Party/Management: MW1, Sri G.S. Kumar

Documents Marked:—

On the petitioner's side

Ex.No.	Date	Description
Ex. W1	12.01.2004	Proposal for appointment of the petitioner by Himanshu Goswami
Ex.W2	26.04.2005	Proposal sent by Chief Administrative Officer regarding appointment of Substitute Bungalow Lascar to Himanshu Goswami
Ex. W3	25.05.2005	Approval order for A. Natarajan issued by the Chief Personnel Officer regarding engagement of Substitute Bungalow Lascar
Ex. W4	16.06.2005	Appointment Order issued by Executive Engineer to A. Natarajan
Ex. W5	01.07.2005	Memorandum relating to petitioner's appointment
Ex. W6	14.10.2005	Termination order issued by Deputy Chief Engineer
Ex. W7	29.10.2005	Complaint of the petitioner to the Vigilance Department

Ex. W8	24.06.2005	Loan receipt from Railway Employees Co-operative Credit Society Ltd.
Ex. W9	12.01.2006	Receipt of confirmation of complaint from the Vigilance Department
Ex. W10	31.01.2007	Representation of the petitioner to the General Manager seeking reinstatement
Ex. W11	11.10.2007	Representation to the General Manager seeking reinstatement
Ex. W12	17.04.2009	Letter of the petitioner to the Asstt. Commissioner of Labour regarding reinstatement
Ex. W13	14.07.2009	Reply filed by the Respondent in 2A petition
Ex. W14	20.07.2009	Industrial Dispute raised before the Asstt. Commissioner of Labour under Section-2A of the ID Act (Conciliation)
Ex W15	01.12.2009	Failure report sent by Asstt. Commissioner of Labour to Ministry of Labour
Ex. W16	10.08.2010	RTI Reply to the application under RTI Act.
Ex. W17	11.02.2011	Reference to Central Government Industrial Tribunal

On the Management side :

Ex.No.	Date	Description
Ex. M1	31.05.2012	Authorization letter
Ex. M2	07.04.2005	Letter from the petitioner to Respondent
Ex. M3	25.05.2005	Approval of General Manager, Southern Railway for appointment of the petitioner
Ex. M4	16.06.2005	Appointment letter order of the petitioner
Ex. M5	01.07.2005	Memorandum for joining duty issued to the Respondent
Ex. M6	14.10.2005	Termination Order
Ex. M7	26.03.2007	Letter from the Respondent to the Chief Personnel Officer
Ex. M8	-	Indian Railway Establishment Manual 1502
Ex. M9	12.12.2002	Policy/Instructions for recruitment of Bungalow Lascar
Ex. M10	12.02.1999	Central Administrative Tribunal, New Delhi order